

Rulemaking File Index
Title 18. Public Revenue

Property Tax Rule 313, *Hearing Procedure*, and Rule 321, *Burden of Proof*

OAL Approval

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**State of California
Office of Administrative Law**

RECEIVED
OCT 26 2012
Board Proceedings

In re:
Board of Equalization

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Regulatory Action:

Government Code Section 11349.3

Title 18, California Code of Regulations

OAL File No. 2012-0917-03 S

Adopt sections:
Amend sections: 313, 321
Repeal sections:

The State Board of Equalization proposed to amend sections 313 and 321 of title 18 of the California Code of Regulations to implement a change made to Revenue and Taxation Code section 167 by defining the term "owner-occupied single family dwelling" for purposes of determining the burden of proof.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 11/22/2012.

Date: 10/23/2012

 CRAIG S. TARPENNING

**Craig S. Tarpenning
Senior Staff Counsel**

**For: DEBRA M. CORNEZ
Director**

**Original: Kristine Cazadd
Copy: Richard Bennion**

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: 10/25/2012
RE: Return of Approved Rulemaking Materials
OAL File No. 2012-0917-03S

OAL hereby returns this file your agency submitted for our review (OAL File No. 2012-0917-03S regarding Hearing Procedure).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved file is specified on the Form 400 (see item B.5). (Please Note: The 30th Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

NOTICE PUBLICATION/REGULATION SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER S	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

2012 SEP 17 P. 2:19

OFFICE OF
ADMINISTRATIVE LAW

2012 OCT 23 PM 12:39



NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (If any)

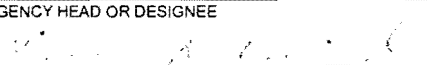
A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2012, NO. 26-2	PUBLICATION DATE 6/29/2012	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Hearing Procedure		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLE(S) 18		AMEND 313, 321	
		REPEAL	
3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> File & Print <input type="checkbox"/> Print Only			
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Other (Specify) _____			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal			
<input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984 E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE September 11, 2012
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 23 2012

Office of Administrative Law

**Final Text of Proposed Amendments to
California Code of Regulations, Title 18, Sections 313 and 321**

Section 313. Hearing Procedure.

Hearings on applications shall proceed as follows:

(a) The chair or the clerk shall announce the number of the application and the name of the applicant. The chair shall then determine if the applicant or the applicant's agent is present. If neither is present, the chair shall ascertain whether the clerk has notified the applicant of the time and place of the hearing. If the notice has been given and neither the applicant nor the applicant's agent is present, the application shall be denied for lack of appearance, or, for good cause of which the board is timely informed prior to the hearing date, the board may postpone the hearing. If the notice has not been given, the hearing shall be postponed to a later date and the clerk directed to give proper notice thereof to the applicant.

The denial of an application for lack of appearance by the applicant, or the applicant's agent, is not a decision on the merits of the application and is not subject to the provisions of regulation 326 of this subchapter. The board of supervisors may adopt a procedure which authorizes reconsideration of the denial where the applicant furnishes evidence of good cause for the failure to appear or to make a timely request for postponement and files a written request for reconsideration within a period set by the board, not to exceed 60 days from the date of mailing of the notification of denial due to lack of appearance. Applicants who fail to request reconsideration within the period set, or whose requests for reconsideration are denied, may refile an appeal of the base year value during the next regular filing period in accordance with Revenue and Taxation Code section 80.

(b) If the applicant or the applicant's agent is present, the chair or the clerk shall announce the nature of the application, the assessed value as it appears on the local roll and the applicant's opinion of the value of the property. The chair may request that either or both parties briefly describe the subject property, the issues the board will be requested to determine, and any agreements or stipulations agreed to by the parties.

(c) In applications where the applicant has the burden of proof, the board shall require the applicant or the applicant's agent to present his or her evidence first, and then the board shall determine whether the applicant has presented proper evidence supporting his or her position. This is sometimes referred to as the burden of production. In the event the applicant has met the burden of production, the board shall then require the assessor to present his or her evidence. The board shall not require the applicant to present evidence first when the hearing involves:

(1) A penalty portion of an assessment.

(2) The assessment of an owner-occupied single-family dwelling or the appeal of an escape assessment, and the applicant has filed an application that provides all of the information required in regulation 305(c) of this subchapter and has supplied all information as required by law to the assessor. An owner-occupied single-family

dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue and Taxation Code section 218. "Property that qualifies for a homeowners' property tax exemption" also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5. In those instances, the chair shall require the assessor to present his or her case to the board first. With respect to escape assessments, the presumption in favor of the applicant provided in regulation 321(d) of this subchapter does not apply to appeals resulting from situations where an applicant failed to file a change in ownership statement, a business property statement, or to obtain a permit for new construction.

(3) A change in ownership and the assessor has not enrolled the purchase price, and the applicant has provided the change of ownership statement required by law. The assessor bears the burden of proving by a preponderance of the evidence that the purchase price, whether paid in money or otherwise, is not the full cash value of the property.

(d) All testimony shall be taken under oath or affirmation.

(e) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Failure to enter timely objection to evidence constitutes a waiver of the objection. The board may act only upon the basis of proper evidence admitted into the record. Board members or hearing officers may not act or decide an application based upon consideration of prior knowledge of the subject property, information presented outside of the hearing, or personal research. A full and fair hearing shall be accorded the application. There shall be reasonable opportunity for the presentation of evidence, for cross-examination of all witnesses and materials proffered as evidence, for argument and for rebuttal. The party having the burden of proof shall have the right to open and close the argument.

(f) When the assessor requests the board find a higher assessed value than he or she placed on the roll and offers evidence to support the higher value, the chair shall determine whether or not the assessor gave notice in writing to the applicant or the applicant's agent by personal delivery or by deposit in the United States mail directed to the address given on the application. If notice and a copy of the evidence offered has been supplied at least 10 days prior to the hearing, the assessor may introduce such evidence at the hearing. When the assessor proposes to introduce evidence to support a higher assessed value than the value on the roll, the assessor no longer has the presumption accorded in regulation 321(a) of this subchapter and the assessor shall present evidence first at the hearing, unless the applicant has failed to supply all the information required by law to the assessor. The foregoing notice requirement shall not prohibit the board from a finding of a higher assessed value when it has not been requested by the assessor.

(g) Hearings by boards and hearing officers shall be open, accessible, and audible to the public except that:

(1) Upon conclusion of the evidentiary portion of the hearing, the board or hearing officer may take the matter under submission and deliberate in private in reaching a decision, and

(2) The board or hearing officer may grant a request by the applicant or the assessor to close to the public a portion of the hearing relating to trade secrets. For purposes of this regulation, a "trade secret" is that information defined by section 3426.1 of the Civil Code. Such a request may be made by filing with the clerk a declaration under penalty of perjury that evidence is to be presented by the assessor or the applicant that relates to trade secrets whose disclosure to the public will be detrimental to the business interests of the owner of the trade secrets. The declaration shall state the estimated time it will take to present the evidence. Only evidence relating to the trade secrets may be presented during the time the hearing is closed, and such evidence shall be confidential unless otherwise agreed by the party to whom it relates.

Note: Authority cited: Section 15606(c), Government Code. Reference: Article XIII A, California Constitution; Sections 110, 167, 205.5, 218, 1605.4, 1607, 1609, 1609.4 and 1637, Revenue and Taxation Code; and Section 664, Evidence Code.

Section 321. Burden of Proof.

(a) Subject to exceptions set by law, it is presumed that the assessor has properly performed his or her duties. The effect of this presumption is to impose upon the applicant the burden of proving that the value on the assessment roll is not correct, or, where applicable, the property in question has not been otherwise correctly assessed. The law requires that the applicant present independent evidence relevant to the full value of the property or other issue presented by the application.

(b) If the applicant has presented evidence, and the assessor has also presented evidence, then the board must weigh all of the evidence to determine whether it has been established by a preponderance of the evidence that the assessor's determination is incorrect. The presumption that the assessor has properly performed his or her duties is not evidence and shall not be considered by the board in its deliberations.

(c) The assessor has the burden of establishing the basis for imposition of a penalty assessment.

(d) Exceptions to subsection (a) apply in any hearing involving the assessment of an owner-occupied single-family dwelling or an escape assessment. An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to

Revenue and Taxation Code section 218. "Property that qualifies for a homeowners' property tax exemption" also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5. In such instances, the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment.

(e) In hearings involving change in ownership, except as provided in section 110 of the Revenue and Taxation Code, the purchase price is rebuttably presumed to be the full cash value. The party seeking to rebut the presumption bears the burden of proof by a preponderance of the evidence.

(f) In weighing evidence, the board shall apply the same evidentiary standard to the testimony and documentary evidence presented by the applicant and the assessor. No greater relief may be granted than is justified by the evidence produced during the hearing.

Note: Authority cited: Section 15606(c), Government Code. Reference: Sections 110, 167, 205.5, 218 and 1601 et seq., Revenue and Taxation Code; and Section 664, Evidence Code.

Because the Policy applies to a clearly defined class of persons, the first element of the Supreme Court's criteria is met.

The Policy prescribes a system whereby External Investment Resources disclose to CalPERS those circumstances that may create actual, potential or perceived Conflicts of Interest.³ The Policy imposes specific disclosure responsibilities on External Investment Managers and sets forth the procedures to be followed by CalPERS' staff in reviewing those disclosures. Because the Policy governs CalPERS' procedures, the second of the Supreme Court's criteria is met. Please note that the Policy is mandatory in its expression. Section III of the Policy defines the "responsibilities" of CalPERS investment staff and External Investment Resources. For example, Section III(B)(2) states that the External Investment Resource "must provide. . .".

I am not aware of any exception under the APA with respect to the Policy.

6. This petition raises an issue of considerable public importance requiring prompt resolution. The Policy was very recently amended without compliance with the notice and comment procedures of the Administrative Procedure Act. The issue of conflicts of interest involving public pension funds has attracted widespread press coverage. In 2009, CalPERS was, according to *The Wall Street Journal*, "rocked" by pay to play allegations involving a former CalPERS Board member. The following year, the United States Securities and Exchange Commission ("SEC") adopted specific "pay-to-play" rules for registered investment advisers. Unlike CalPERS, the SEC adopted its rules in compliance with the rulemaking procedures of federal Administrative Procedure Act. See Investment Advisers Act Release IA-3041, 75 Fed. Reg. 41018 (2010). SEC Chairman Mary Schapiro has noted the public importance of these rules: "These new rules will help level the playing field, allowing advisers

³ CalPERS defines a "conflict of interest" as follows:

"Conflict of Interest or Conflict includes those circumstances that create an actual conflict with the External Investment Resource's duty (consistent with fiduciary standards of care) to provide investment services that is aligned solely with the best interests of CalPERS' plan participants and beneficiaries. A Conflict exists when a External Investment Resource knows or has reason to know that he or she, his or her spouse, or a close relative, domestic partner or other significant personal or business relationship of the External Investment Resource, has a financial or other interest that is likely to bias the External Investment Resource's evaluation of or advice with respect to a transaction or assignment on behalf of CalPERS." CalPERS Master Glossary of Terms.

of all sizes to compete for government contracts based on investment skill and quality of service." Last year, CalPERS' Board President, Rob Feckner, was quoted as saying "We have institutionalized more than a dozen new reforms and policies to guard against future wrongdoing. . .". Unfortunately, many of these reforms, including the Policy, were adopted as underground regulations.

7. I certify that concurrently with submitting this Petition, I am faxing a copy of this petition to the following person at CalPERS:

PeterMixon, General Counsel
California Public Employees System Legal Office
916-795-3410

If you should have any questions regarding the foregoing, please do not hesitate to contact me.

Very Truly Yours,

/s/

KeithPaul Bishop

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2012-0917-03
Board of Equalization
Hearing Procedure

The State Board of Equalization amended sections 313 and 321 of title 18 of the California Code of Regulations to implement a change made to Revenue and Taxation Code section 167 by defining the term "owner-occupied single family dwelling" for purposes of determining the burden of proof.

Title 18
California Code of Regulations
AMEND: 313, 321
Filed 10/23/2012
Effective 11/22/2012
Agency Contact:

Richard E. Bennion

(916) 445-2130

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Title 18. Public Revenue

Property Tax Rule **313**, *Hearing Procedure*, and Rule 321, *Burden of Proof*

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 - PTC Agenda
 - Formal Issue Paper 12-004
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5. [Estimate of Cost or Savings, August 9, 2012](#)
6. [Economic and Fiscal Impact Statements, June 18, 2012](#)
7. [Notice of Publications](#)
 - Form 400 and Notice, Publication Date June 29, 2012
 - Proposed Text of Rules 313 and 321
 - Email sent to Interested Parties, June 29, 2012
 - CA Regulatory Notice Register 2012, Volume No. 26-Z
8. [Notice to Interested Parties, June 29, 2012](#)

The following items are exhibited:

 - Notice of Hearing
 - Initial Statement of Reasons
 - Proposed Text of Rules 313 and 321
 - Regulation History
9. [Statement of Compliance](#)
10. [Public Comment, Dale Hough, Chief Appraiser, Los Angeles County Assessor](#)
11. [Reporter's Transcript, Item F1, August 21, 2012](#)
12. [Draft Minutes, August 21, 2012, and Exhibits](#)
 - Notice of Proposed Regulatory Action
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Title 18. Public Revenue

Property Tax Rule 313, *Hearing Procedure*, and Rule 321, *Burden of Proof*

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The following items are exhibited:

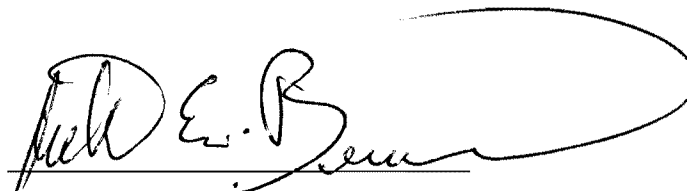
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VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was closed on September 10, 2012 and that the attached copy is complete.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

September 10, 2012

A handwritten signature in black ink, appearing to read "Richard E. Bennion", written over a horizontal line.

Richard E. Bennion
Regulations Coordinator
State Board of Equalization

**Final Statement of Reasons for
Adoption of Proposed Amendments to California Code of Regulations,
Title 18, Section 313, *Hearing Procedure*, and
Section 321, *Burden of Proof***

Update of Information in the Initial Statement of Reasons

The factual basis, specific purpose, and necessity for, the problem to be addressed by, and the anticipated benefits from the proposed amendments to California Code of Regulations, title 18, sections (Property Tax Rules) 313, *Hearing Procedure*, and 321, *Burden of Proof*, are the same as provided in the initial statement of reasons.

The adoption of the proposed amendments to Property Tax Rules 313 and 321 was not mandated by federal law or regulations and there is no federal regulation that is identical to Property Tax Rule 313 or 321.

The State Board of Equalization (Board) did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing or adopting the amendments to Property Tax Rules 313 and 321 that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period.

In addition, the factual basis has not changed for the Board's initial determination that the proposed regulatory action will not have a significant adverse economic impact on business and the Board's economic impact analysis, which determined that the Board's proposed regulatory action:

- Will neither create nor eliminate jobs in the State of California;
- Nor result in the elimination of existing businesses;
- Nor create or expand business in the State of California; and
- Will not affect the health and welfare of California residents, worker safety, or the state's environment.

The proposed amendments may affect small business.

No Mandate on Local Agencies or School Districts

The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 does not impose a mandate on local agencies or school districts.

Public Comments

The Board received a letter dated August 14, 2012, from Dale Hough, Chief Appraiser in the Assessment Services Division of the Los Angeles County Assessor's Office. The letter indicated that the Los Angeles County Assessor agrees with the proposed amendments to Property Tax Rules 313 and 321. No other interested parties submitted written comments regarding the proposed amendments and no interested parties appeared

at the public hearing on August 21, 2012, to comment on the proposed amendments.

Determinations Regarding Alternatives

By its motion, the Board determined that no alternative to the proposed amendments to Property Tax Rules 313 and 321 would be more effective in carrying out the purposes for which the regulations are proposed, would be as effective and less burdensome to affected private persons than the adopted regulations, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Furthermore, the Board did not reject any reasonable alternatives to the proposed amendments to Property Tax Rules 313 and 321 that would lessen any adverse impact the proposed amendments may have on small business. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

In addition, the proposed amendments are anticipated to provide the following benefits:

- Make Property Tax Rules 312 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711; and
- Clarify the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711.

Updated Informative Digest for
Adoption of Proposed Amendments to California Code of Regulations,
Title 18, Section 313, *Hearing Procedure*, and
Section 321, *Burden of Proof*

On August 21, 2012, the State Board of Equalization (Board) held a public hearing on and unanimously voted to adopt the original text of the proposed amendments to California Code of Regulations, title 18, sections (Property Tax Rules) 313, *Hearing Procedure*, and 321, *Burden of Proof*, described in the notice of proposed regulatory action. The proposed amendments clarify and make both Property Tax Rules 313 and 321 consistent with Assembly Bill No. (AB) 711 (Stats. 2011, ch. 220), which defined the term “owner-occupied single-family dwelling” for purposes of the rebuttable presumption regarding the burden of proof in hearings on specified property tax applications provided by Revenue and Taxation Code (RTC) section 167.

The Board received a letter dated August 14, 2012, from Dale Hough, Chief Appraiser in the Assessment Services Division of the Los Angeles County Assessor’s Office. The letter indicated that the Los Angeles County Assessor agrees with the proposed amendments. No other interested parties submitted written comments regarding the proposed amendments and no interested parties appeared at the public hearing on August 21, 2012, to comment on the proposed amendments.

There have not been any changes to the applicable laws or the effect of the adoption of the proposed amendments to Property Tax Rules 313 and 321 described in the informative digest included in the notice of proposed regulatory action. The informative digest included in the notice of proposed regulatory action provides:

“Prior Law

“RTC section 167, subdivision (a), establishes a rebuttable presumption regarding the burden of proof in county boards’ hearings on property tax applications regarding owner-occupied single-family dwellings. RTC section 167, subdivision (a) provides that ‘Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b), there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment.’

“Property Tax Rule 313 prescribes the procedures county boards must follow when conducting hearings on property tax applications. Property Tax Rule 313, subdivision (c)(2), incorporates the rebuttable presumption in RTC section 167 and provides, in relevant part, that ‘The board shall not require the applicant to present evidence first when the hearing involves: . . . (2) The assessment of an owner-occupied single-family dwelling or the appeal of an escape assessment, and the applicant has filed an application

that provides all of the information required in regulation 305(c) of this subchapter and has supplied all information as required by law to the assessor. In those instances, the chair shall require the assessor to present his or her case to the board first.’

“In addition, Property Tax Rule 321 prescribes the burden of proof in county boards’ hearings regarding property tax applications. Property Tax Rule 321, subdivision (d), also incorporates the rebuttable presumption in RTC section 167 and provides that ‘in any hearing involving the assessment of an owner-occupied single-family dwelling . . . the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment.’

“Amendments Made by AB 711

“AB 711 added subdivision (c) to RTC section 167 to define the term ‘owner-occupied single-family dwelling’ as used in the rebuttable presumption. New subdivision (c) provides that:

For the purposes of this section, an owner-occupied single-family dwelling means a single-family dwelling that satisfies both of the following:

- (1) The dwelling is the owner's principal place of residence.
- (2) The dwelling qualifies for a homeowners' property tax exemption.

“Effect, Objectives, and Benefits of the Proposed Amendments

“Board staff initiated a project the objective of which was to recommend language that could be added to Property Tax Rules 313 and 321 to incorporate the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711, and thereby make the rules consistent with the new subdivision. As a result, Board staff issued Letter to Assessors No. (LTA) 2012/007 on January 30, 2012, which recommended amending Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to add the following sentence, and solicited comments regarding the recommendation from county assessors, county boards, and other interested parties:

An owner-occupied single-family dwelling means a single-family dwelling that is the owner’s principal place of residence and qualifies for a homeowners' property tax exemption.

“Board staff received one comment in response to LTA 2012/007. The comment explained that real property that is the owner’s principal residence and qualifies for the \$100,000 disabled veterans’ exemption provided by RTC section 205.5 also qualifies for the \$7,000 homeowners’ property tax exemption provided by RTC section 218, even though taxpayers that are eligible for both exemptions choose to claim the larger disabled veterans’ exemption, and that such property is therefore subject to the rebuttable presumption in RTC section 167, subdivision (a). The comment also recommended

adding a sentence to the proposed amendments to both Property Tax Rules 313 and 321 to clarify that property that qualifies for a homeowners' property tax exemption includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

"Board staff agreed with the above comment because RTC section 218, subdivision (b)(1), expressly provides that the homeowners' property tax exemption does not 'apply to property on which the owner receives the veterans' exemption' specified by RTC section 205, but RTC section 218 does not contain similar language providing that property on which the owner receives the disabled veterans' exemption provided by RTC section 205.5 cannot qualify for the homeowners' property tax exemption. Subsequently, Board staff prepared Formal Issue Paper 12-004 and submitted it to the Board for consideration at its May 30, 2012, Property Tax Committee meeting. The issue paper recommended that the Board add references to RTC sections 205.5 and 218, which respectively prescribe the disabled veterans exemption and homeowners' property tax exemption, to the reference notes to Property Tax Rules 313 and 321, and add the following two sentences to Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to incorporate and clarify the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711:

An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue and Taxation Code section 218. 'Property that qualifies for a homeowners' property tax exemption' also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5.

"During its May 30, 2012, Property Tax Committee meeting, the Board determined that staff's recommended amendments are reasonably necessary to accomplish the objectives of making Property Tax Rules 313 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711, and further clarifying the meaning of the phrase 'qualifies for a homeowners' property tax exemption,' as used in RTC section 167, subdivision (c), as added by AB 711. Therefore, the Board unanimously voted to propose the adoption of the recommended amendments.

"The proposed amendments are anticipated to provide the following specific benefits:

- Make Property Tax Rules 312 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711; and
- Clarify the meaning of the phrase 'qualifies for a homeowners' property tax exemption,' as used in RTC section 167, subdivision (c), as added by AB 711.

"The Board has performed an evaluation of whether the proposed amendments to Property Tax Rules 313 and 321 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or

incompatible with existing state regulations because Property Tax Rules 313 and 321 are the only existing state regulations prescribing the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings. In addition, there is no federal property tax and there are no comparable federal regulations or statutes to Property Tax Rules 313 and 321."



BOARD OF EQUALIZATION

PROPERTY TAX COMMITTEE MEETING MINUTES

HONORABLE GEORGE RUNNER, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MAY 30, 2012 - 10:00 A.M.

ACTION ITEM**Agenda Item No: 1****Title:**

Authorization to publish proposed amendments to Property Tax Rules 313 and 321

Issue:Should the Board of Equalization authorize publication of amendments to Property Tax Rule 313, *Hearing Procedure*, and Property Tax Rule 321, *Burden of Proof*?**Committee Discussion:**

Committee Chair Runner opened the Committee meeting by introducing the agenda item and asked staff to give a report on the issue.

Dean Kinnee, Chief, County-Assessed Properties Division, gave the Committee an overview of the interested parties process for the proposed amendments to the rules. Mr. Kinnee advised the Committee that the proposed revisions were to accommodate amendments to Revenue and Taxation Code section 167 as enacted by Assembly Bill 711 (Stats. 2011, ch. 220). One comment was received during the interested parties process, and that comment was accommodated in the proposed revisions to the rules submitted to the Property Tax Committee for consideration.

Committee Chair Runner thanked staff for working with interested parties to revise the Property Tax Rules which will bring them into conformity with the Revenue and Taxation Code.


Committee Action:

Member Yee made a motion to recommend publication of the proposed amendments to Property Tax Rules 313 and 321 as presented in Issue Paper 12-004. The motion was seconded by Member Horton. Without objection, the motion passed.

Approved:


George Runner, Committee Chair
Kristine Cazadd, Executive Director**BOARD APPROVED**

At the 5/30/12 Board Meeting


Joann Richmond, Chief
Board Proceedings Division



BOARD OF EQUALIZATION

PROPERTY TAX COMMITTEE MEETING AGENDA

SENATOR GEORGE RUNNER , COMMITTEE CHAIR

450 N STREET, SACRAMENTO - ROOM 121

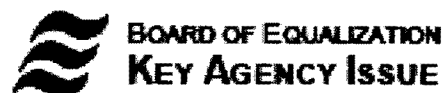
BOARD OF EQUALIZATION

MAY 30, 2012 – 9:30 A.M.

-
1. Discussion of proposed revisions to Property Tax rule 313, *Hearing Procedure*, and Rule 321, *Burden of Proof*.

5/30/12

Issue Paper Number 12-004



- ☐ Board Meeting
- ☐ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☒ Property Tax Committee
- ☐ Other

Amendments to Property Tax Rules 313 and 321

I. Issue

Should the State Board of Equalization (BOE) authorize publication of amendments to Property Tax Rule 313, *Hearing Procedure*, and Property Tax Rule 321, *Burden of Proof*?

II. Alternative 1 - Staff Recommendation

Staff recommends that the attached proposed amendments to Property Tax Rule 313, *Hearing Procedure*, and Property Tax Rule 321, *Burden of Proof*, be adopted and authorized for publication (see Attachment A).

III. Other Alternative(s) Considered

None

IV. Background

Under Government Code section 15606, subdivision (c), the BOE is given the power and duty to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. In compliance with this duty, the BOE has adopted Property Tax Rules 301 through 326, relative to the local equalization process.

Assembly Bill 711 (Stats. 2011, ch. 220), effective January 1, 2012, amends Revenue and Taxation Code section 167 to provide that an owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and that it qualifies for a homeowners' property tax exemption. This clarifies the rebuttable presumption affecting the burden of proof contained in section 167 pertaining to an assessment appeal hearing involving a single-family residence. The amendment to section 167 now places the burden of proof on the taxpayer for a rental single-family dwelling or a secondary vacation dwelling.

V. Discussion

Staff of the Property and Special Taxes Department, County-Assessed Properties Division, initiated a project to amend Property Tax Rules 313 and 321 to provide a definition of *owner-occupied single-family dwelling* consistent with the amendments to Revenue and Taxation Code section 167. Interested parties were provided with proposed draft language for the rules on January 30, 2012 (Letter To Assessors 2012/007) and invited to participate in the rulemaking effort. One comment was received, and it is accommodated in the proposed revisions to the rules.

VI. Alternative I - Staff Recommendation

Adopt and authorize for publication amendments to Property Tax Rule 313, *Hearing Procedure*, and Property Tax Rule 321, *Burden of Proof*. The primary focus of the proposed amendments is to reflect changes to Revenue and Taxation Code section 167.

A. Description of Alternative I

Staff recommends that the attached proposed amendments to Property Tax Rule 313, *Hearing Procedure*, and Property Tax Rule 321, *Burden of Proof*, be adopted and authorized for publication (see Attachment A). The proposed amendments add to each rule a definition of "owner-occupied single-family dwelling" consistent with the Revenue and Taxation Code.

B. Pros of Alternative I

Amendments to Property Tax Rules 313 and 321 will provide clarification for county assessors, members of local equalization and assessment appeals boards, and taxpayers regarding the rebuttable presumption affecting the burden of proof in an assessment appeal hearing.

The burden of proof in assessment appeal hearings involving an owner-occupied single-family residence will be on the county assessor. The county assessor must first validate the assessor's opinion of value; the taxpayer will then have the opportunity to refute that value. Conversely, the burden of proof in an assessment appeal hearing involving a single-family residence that is not owner-occupied as the principal residence of the taxpayer will be on the taxpayer. The taxpayer must first validate his/her opinion of value; the county assessor will then have the opportunity to refute that value.

C. Cons of Alternative 1

None

D. Statutory or Regulatory Change for Alternative 1

Action by the BOE to adopt changes to Property Tax Rules 313 and 321 will amend Title 18 of the California Code of Regulations, chapter 1, subchapter 3, sections 313 and 321.

E. Operational Impact of Alternative 1

None

F. Administrative Impact of Alternative 1

1. Cost Impact

Development of Property Tax Rules is within the scope of the statutory duties of the County-Assessed Properties Division and will be absorbed by existing staff.

2. Revenue Impact

None

G. Taxpayer/Customer Impact of Alternative 1

The burden of proof in assessment appeal hearings involving single-family residences that are not the principal residence of the taxpayer (for example, vacation homes or rental properties) will be on the taxpayer.

H. Critical Time Frames of Alternative 1

None

VII. Other Alternatives

None

Preparer/Reviewer Information

Prepared by: Property and Special Taxes Department; County-Assessed Properties Division

Current as of: April 12, 2012

RULE 313. HEARING PROCEDURE.

Authority: Section 15606(c), Government Code.

Reference: Article XIII A, California Constitution.

Sections 110, 167, 205.5, 218, 1605.4, 1607, 1609, 1609.4, and 1637, Revenue and Taxation Code.
Section 664, Evidence Code.

Hearings on applications shall proceed as follows:

(a) The chair or the clerk shall announce the number of the application and the name of the applicant. The chair shall then determine if the applicant or the applicant's agent is present. If neither is present, the chair shall ascertain whether the clerk has notified the applicant of the time and place of the hearing. If the notice has been given and neither the applicant nor the applicant's agent is present, the application shall be denied for lack of appearance, or, for good cause of which the board is timely informed prior to the hearing date, the board may postpone the hearing. If the notice has not been given, the hearing shall be postponed to a later date and the clerk directed to give proper notice thereof to the applicant.

The denial of an application for lack of appearance by the applicant, or the applicant's agent, is not a decision on the merits of the application and is not subject to the provisions of regulation 326 of this subchapter. The board of supervisors may adopt a procedure which authorizes reconsideration of the denial where the applicant furnishes evidence of good cause for the failure to appear or to make a timely request for postponement and files a written request for reconsideration within a period set by the board, not to exceed 60 days from the date of mailing of the notification of denial due to lack of appearance. Applicants who fail to request reconsideration within the period set, or whose requests for reconsideration are denied, may refile an appeal of the base year value during the next regular filing period in accordance with Revenue and Taxation Code section 80.

(b) If the applicant or the applicant's agent is present, the chair or the clerk shall announce the nature of the application, the assessed value as it appears on the local roll and the applicant's opinion of the value of the property. The chair may request that either or both parties briefly describe the subject property, the issues the board will be requested to determine, and any agreements or stipulations agreed to by the parties.

(c) In applications where the applicant has the burden of proof, the board shall require the applicant or the applicant's agent to present his or her evidence first, and then the board shall determine whether the applicant has presented proper evidence supporting his or her position. This is sometimes referred to as the burden of production. In the event the applicant has met the burden of production, the board shall then require the assessor to present his or her evidence. The board shall not require the applicant to present evidence first, when the hearing involves:

(1) A penalty portion of an assessment.

(2) The assessment of an owner-occupied single-family dwelling or the appeal of an escape assessment, and the applicant has filed an application that provides all of the information required in regulation 305(c) of this subchapter and has supplied all information as required by law to the assessor. An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue and Taxation Code section 218. "Property that qualifies for a homeowners' property tax exemption" also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5. In those instances, the chair shall require the assessor to

present his or her case to the board first. With respect to escape assessments, the presumption in favor of the applicant provided in regulation 321(d) of this subchapter does not apply to appeals resulting from situations where an applicant failed to file a change in ownership statement, a business property statement, or to obtain a permit for new construction.

(3) A change in ownership and the assessor has not enrolled the purchase price, and the applicant has provided the change of ownership statement required by law. The assessor bears the burden of proving by a preponderance of the evidence that the purchase price, whether paid in money or otherwise, is not the full cash value of the property.

(d) All testimony shall be taken under oath or affirmation.

(e) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Failure to enter timely objection to evidence constitutes a waiver of the objection. The board may act only upon the basis of proper evidence admitted into the record. Board members or hearing officers may not act or decide an application based upon consideration of prior knowledge of the subject property, information presented outside of the hearing, or personal research. A full and fair hearing shall be accorded the application. There shall be reasonable opportunity for the presentation of evidence, for cross-examination of all witnesses and materials proffered as evidence, for argument and for rebuttal. The party having the burden of proof shall have the right to open and close the argument.

(f) When the assessor requests the board find a higher assessed value than he or she placed on the roll and offers evidence to support the higher value, the chair shall determine whether or not the assessor gave notice in writing to the applicant or the applicant's agent by personal delivery or by deposit in the United States mail directed to the address given on the application. If notice and a copy of the evidence offered has been supplied at least 10 days prior to the hearing, the assessor may introduce such evidence at the hearing. When the assessor proposes to introduce evidence to support a higher assessed value than the value on the roll, the assessor no longer has the presumption accorded in regulation 321(a) of this subchapter and the assessor shall present evidence first at the hearing, unless the applicant has failed to supply all the information required by law to the assessor. The foregoing notice requirement shall not prohibit the board from a finding of a higher assessed value when it has not been requested by the assessor.

(g) Hearings by boards and hearing officers shall be open, accessible, and audible to the public except that:

(1) Upon conclusion of the evidentiary portion of the hearing, the board or hearing officer may take the matter under submission and deliberate in private in reaching a decision, and

(2) The board or hearing officer may grant a request by the applicant or the assessor to close to the public a portion of the hearing relating to trade secrets. For purposes of this regulation, a "trade secret" is that information defined by section 3426.1 of the Civil Code. Such a request may be made by filing with the clerk a declaration under penalty of perjury that evidence is to be presented by the assessor or the applicant that relates to trade secrets whose disclosure to the public will be detrimental to the business interests of the owner of the trade secrets. The declaration shall state the estimated time it will take to present the evidence. Only evidence relating to the trade secrets may be presented during the time the

hearing is closed, and such evidence shall be confidential unless otherwise agreed by the party to whom it relates.

History: Adopted May 11, 1967, effective June 11, 1967.
 Amended October 4, 1967, effective October 5, 1967.
 Amended May 21, 1968, effective June 26, 1968.
 Amended November 20, 1968, effective November 22, 1968.
 Amended June 4, 1969, effective June 6, 1969.
 Amended May 6, 1970, effective June 6, 1970.
 Amended April 14, 1972, effective May 14, 1972.
 Amended June 7, 1973, effective July 15, 1973.
 Amended June 13, 1974, effective June 14, 1974.
 Amended November 4, 1976, effective January 1, 1977.
 Amended April 7, 1977, effective May 22, 1977, applicable to 1977 assessment appeals.
 Amended December 7, 1982, effective March 16, 1983.
 Amended November 14, 1984, effective March 1, 1985.
 Amended January 5, 2000, effective April 22, 2000.
 Amended and effective November 20, 2000.

RULE 321. BURDEN OF PROOF.

Reference: Sections 110, 167, 205.5, 218, 1601 et seq., Revenue and Taxation Code.
Section 664, Evidence Code.

(a) Subject to exceptions set by law, it is presumed that the assessor has properly performed his or her duties. The effect of this presumption is to impose upon the applicant the burden of proving that the value on the assessment roll is not correct, or, where applicable, the property in question has not been otherwise correctly assessed. The law requires that the applicant present independent evidence relevant to the full value of the property or other issue presented by the application.

(b) If the applicant has presented evidence, and the assessor has also presented evidence, then the board must weigh all of the evidence to determine whether it has been established by a preponderance of the evidence that the assessor's determination is incorrect. The presumption that the assessor has properly performed his or her duties is not evidence and shall not be considered by the board in its deliberations.

(c) The assessor has the burden of establishing the basis for imposition of a penalty assessment.

(d) Exceptions to subsection (a) apply in any hearing involving the assessment of an owner-occupied single-family dwelling or an escape assessment. An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue and Taxation Code section 218. "Property that qualifies for a homeowners' property tax exemption" also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5. In such instances, the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment.

(e) In hearings involving change in ownership, except as provided in section 110 of the Revenue and Taxation Code, the purchase price is rebuttably presumed to be the full cash value. The party seeking to rebut the presumption bears the burden of proof by a preponderance of the evidence.

(f) In weighing evidence, the board shall apply the same evidentiary standard to the testimony and documentary evidence presented by the applicant and the assessor. No greater relief may be granted than is justified by the evidence produced during the hearing.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended October 4, 1967, effective October 5, 1967.
Amended November 20, 1968, effective November 22, 1968.
Amended April 14, 1972, effective May 14, 1972.
Amended November 4, 1976, effective January 1, 1977.
Amended July 27, 1982, effective February 10, 1983.
Amended January 5, 2000, effective April 22, 2000.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

MAY 30, 2012

PROPERTY TAX COMMITTEE

Reported by: Juli Price Jackson

No. CSR 5214

P R E S E N T

For the Board
of Equalization:

George Runner
Chairman

Betty T. Yee
Member

Michelle Steel
Member

Jerome E. Horton
Member

Marcy Jo Mandel
Appearing for John
Chiang, State Controller
(per Government Code
Section 7.9)

Joann Richmond
Chief, Board
Proceedings Division

For the Staff:

Dean Kinnee
Chief, County-Assessed
Properties Division

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450 N STREET

SACRAMENTO, CALIFORNIA

MAY 30, 2012

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MR. HORTON: Ms. Richmond, what is our next item?

MS. RICHMOND: Our next item on today's agenda is the Property Tax Committee. Mr. Runner is the Chair of that committee.

Mr. Runner.

MR. RUNNER: Thank you. And I'll call that committee to order.

The item we have before us today is discussion of a proposed revision to Property Tax Rule 313, Hearing Procedure, and Property Tax Rule, 321, burden of proof.

Dean Kinnee is here to help us with that report.

MR. KINNEE: Good morning, Board Members, Dean KINNEE with the Property and Special Taxes Department.

As Chairman Runner pointed out, we're here today with the proposed amendments on Property Tax Rule 313, Hearing Procedure, and Property Tax Rule 321, burden of proof.

Staff is proposing amendments to reflect changes made to Revenue and Taxation Code relating to the rebuttable presumption affecting the burden of proof in assessment appeals hearings.

Staff disseminated the draft rules to

1 interested parties by way of letter to assessors. We
2 did receive one comment back, which we accommodated in
3 the proposal before the Board.

4 At this time we're asking the Board to adopt
5 and authorize for publication the amendments to the
6 rules.

7 We will, of course, start the official
8 rulemaking process. And the rule will go out to
9 interested parties again for comment.

10 I'd be happy to try to answer any questions the
11 Board may have.

12 MR. RUNNER: Okay. Thank you, Mr. Kinnee.

13 I don't -- do we have any speakers on this
14 issue?

15 MS. RICHMOND: No, sir.

16 MR. RUNNER: Okay. First of all, I think again
17 it's -- these are -- these are issues where we're just
18 trying to make sure that our regulations are consistent
19 with statute.

20 And I appreciate getting on that and having
21 that happen appropriately and quickly.

22 Any question by Members?

23 Is there a motion?

24 MS. YEE: Move the staff recommendation.

25 MR. HORTON: Second.

26 MR. RUNNER: All in favor?

27 MS. YEE: Aye.

28 MS. STEEL: Aye.

1 MR. HORTON: Obviously.

2 MR. RUNNER: Okay, thank you.

3 And we will adjourn. Any other questions
4 before we adjourn, Members?

5 Okay, adjourn the Property Tax Committee.

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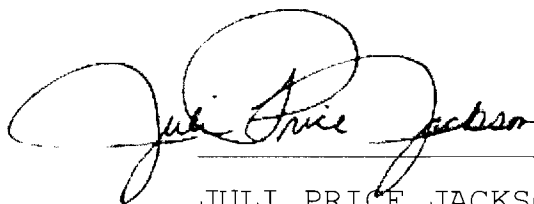
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1 REPORTER'S CERTIFICATE

2
3 State of California)
4) ss
5 County of Sacramento)
6

7 I, JULI PRICE JACKSON, Hearing Reporter for the
8 California State Board of Equalization certify that on
9 MAY 30, 2012 I recorded verbatim, in shorthand, to the
10 best of my ability, the proceedings in the
11 above-entitled hearing; that I transcribed the shorthand
12 writing into typewriting; and that the preceding pages 1
13 through 5 constitute a complete and accurate
14 transcription of the shorthand writing.
15

16 Dated: JUNE 19, 2012

17
18
19 

20 JULI PRICE JACKSON

21 Hearing Reporter
22
23
24
25
26
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28



**ESTIMATE OF COST OR SAVINGS RESULTING
FROM PROPOSED REGULATORY ACTION**

Proposed Amendment of Property Tax Rules 313, Hearing Procedure, and 321, Burden of Proof

STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

The cost impact on private persons or businesses will be insignificant. This proposal will not have a significant adverse economic impact on businesses.

This proposal will not be detrimental to California businesses in competing with businesses in other states.

This proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand business in the State of California.

Statement
Prepared by  Date 8-9-12
Richard Bennion, Regulations Coordinator

Approved by  Date 8/9/12
Randy Ferris, Chief Counsel

If Costs or Savings are Identified, Signatures of Chief, Fiscal Management Division, and Chief, Board Proceedings Division, are Required

Approved by _____ Date _____
Chief, Financial Management Division

Approved by _____ Date _____
Chief, Board Proceedings Division

NOTE: SAM Section 6660 requires that estimates resulting in cost or savings be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.

ECONOMIC AND FISCAL IMPACT STATEMENT**(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2008)

See SAM Section 6601 - 6616 for Instructions and Code Citations

AGENCY NAME State Board of Equalization	CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 313, Hearing Procedure, and Section 321, Burden of Proof		NOTICE FILE NUMBER Z

ECONOMIC IMPACT STATEMENT**A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)**

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|---|--|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input checked="" type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) Please see the attached .

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: _____ Describe the types of businesses (Include nonprofits.): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (List areas.): _____

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: _____**B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)**

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

Describe other economic costs that may occur: _____

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

2. If multiple industries are impacted, enter the share of total costs for each industry: _____
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ _____
4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: _____ and the number of units: _____
5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: _____
- Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: _____
2. Are the benefits the result of : ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority? Explain: _____
3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____
2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:
- | | | |
|----------------|-------------------|----------------|
| Regulation: | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 1: | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 2: | Benefit: \$ _____ | Cost: \$ _____ |

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____
4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No plain: _____

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? ☐ Yes ☐ No (If No, skip the rest of this section.)

riefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation:	\$ _____	Cost-effectiveness ratio: \$ _____
Alternative 1:	\$ _____	Cost-effectiveness ratio: \$ _____
Alternative 2:	\$ _____	Cost-effectiveness ratio: \$ _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in _____, Budget Act of _____ or Chapter _____, Statutes of _____

☐ b. will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____
(FISCAL YEAR)

☐ 2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in _____

☐ b. implements the court mandate set forth by the _____
court in the case of _____ vs. _____

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____
election; (DATE)

☐ d. is issued only in response to a specific request from the _____
_____, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the _____ authorized by Section
(FEES, REVENUE, ETC.)

_____ of the _____ Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit;

☐ g. creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

Savings of approximately \$ _____ annually.

☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

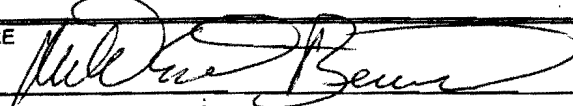


- ☒ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other.

B. FISCAL EFFECT ON STATE GOVERNMENT (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- ☐ 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the _____ fiscal year.
- ☐ 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☐ 4. Other.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- ☐ 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year.
- ☐ 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- ☐ 4. Other.

SIGNATURE 		TITLE Regulations Coordinator
AGENCY SECRETARY ¹		DATE
APPROVAL/CONCURRENCE 	PROGRAM BUDGET MANAGER	6-18-12
DEPARTMENT OF FINANCE ²		DATE
APPROVAL/CONCURRENCE  Exempt under SAM section 6660		

- The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
- Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

Attachment to Economic and Fiscal Impact
Statement (STD. 399 (Rev. 12/2008)) for the Proposed Amendments to
California Code of Regulations, Title 18, Section 313, *Hearing Procedure*,
and Section 321, *Burden of Proof*

Revenue and Taxation Code (RTC) section 167 establishes a rebuttable presumption regarding the burden of proof in county board of equalization (county board) hearings on property tax applications regarding owner-occupied single-family dwellings. Assembly Bill No. (AB) 711 (Stats. 2011, ch. 220) defined the term “owner-occupied single-family dwelling,” as used in the rebuttable presumption, to mean a single-family dwelling that is the owner's principal place of residence and qualifies for the homeowners' property tax exemption provided by RTC section 218. In addition, the Board determined that property that qualifies for the homeowners' property tax exemption includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

The proposed amendments to Property Tax Rules 313 and 321 add two sentences to Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to:

- Incorporate the express definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711; and
- Clarify that property that qualifies for the homeowners' property tax exemption provided by RTC section 218 includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

The proposed amendments also add references to RTC sections 205.5 and 218, which respectively prescribe the disabled veterans exemption and homeowners' property tax exemption, to both rules' reference notes.

The proposed amendments make Property Tax Rules 313 and 321 consistent with the amendments made to RTC section 167 by AB 711. The proposed amendments to Property Tax Rules 313 and 321 also clarify the amendments made to RTC section 167 by AB 711 by explaining that property that qualifies for the homeowners' property tax exemption provided by RTC section 218 includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5. In addition, the clarification was suggested in the one comment Board staff received in response to Letter to Assessors No. 2012/007 regarding the Board's project to amend Property Tax Rules 313 and 321 to incorporate the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711. The proposed amendments do not make any other changes to either rule.

Therefore, based upon the foregoing information and all of the information in the rulemaking file, the Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321:

- Will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states;
- Will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California;
- Will not have a significant effect on housing costs;
- Will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California; and
- Will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

In addition, the Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action.

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER 2012 0619 01	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION DATE

JUN 19 '12 JUN 29 '12

Office of Administrative Law

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Hearing Procedure		TITLE(S) 18	FIRST SECTION AFFECTED 313	2. REQUESTED PUBLICATION DATE June 29, 2012
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Rick Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
OAL USE ONLY ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER		PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
------------------------------	--

* SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

ECTIONS(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	REPEAL
TITLE(S)	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)		<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
--	--	---	--

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
-------------------	------------------	-----------------------	---------------------------

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
TYPED NAME AND TITLE OF SIGNATORY	

Notice of Proposed Regulatory Action
The State Board of Equalization Proposes to Adopt
Amendments to California Code of Regulations, Title 18,
Section 313, *Hearing Procedure*, and
Section 321, *Burden of Proof*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to adopt amendments to California Code of Regulations, title 18, sections (Property Tax Rules) 313, *Hearing Procedure*, and 321, *Burden of Proof*. Property Tax Rule 313 prescribes the procedures that county boards of equalization (county boards) must follow when conducting hearings on property tax applications. Property Tax Rule 321 prescribes the burden of proof in county boards' hearings regarding property tax applications. The proposed amendments clarify and make both Property Tax Rules 313 and 321 consistent with Assembly Bill No. (AB) 711 (Stats. 2011, ch. 220), which defined the term "owner-occupied single-family dwelling" for purposes of the rebuttable presumption regarding the burden of proof in hearings on specified property tax applications provided by Revenue and Taxation Code (RTC) section 167.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on August 21-23, 2012. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on August 21, 22, or 23, 2012. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Property Tax Rules 313 and 321.

AUTHORITY

Government Code section 15606.

REFERENCE

RTC sections 167, 205.5, and 218.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Prior Law

RTC section 167, subdivision (a), establishes a rebuttable presumption regarding the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings. RTC section 167, subdivision (a) provides that "Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b), there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment."

Property Tax Rule 313 prescribes the procedures county boards must follow when conducting hearings on property tax applications. Property Tax Rule 313, subdivision (c)(2), incorporates the rebuttable presumption in RTC section 167 and provides, in relevant part, that "The board shall not require the applicant to present evidence first when the hearing involves: . . . (2) The assessment of an owner-occupied single-family dwelling or the appeal of an escape assessment, and the applicant has filed an application that provides all of the information required in regulation 305(c) of this subchapter and has supplied all information as required by law to the assessor. In those instances, the chair shall require the assessor to present his or her case to the board first."

In addition, Property Tax Rule 321 prescribes the burden of proof in county boards' hearings regarding property tax applications. Property Tax Rule 321, subdivision (d), also incorporates the rebuttable presumption in RTC section 167 and provides that "in any hearing involving the assessment of an owner-occupied single-family dwelling . . . the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment."

Amendments Made by AB 711

AB 711 added subdivision (c) to RTC section 167 to define the term "owner-occupied single-family dwelling" as used in the rebuttable presumption. New subdivision (c) provides that:

For the purposes of this section, an owner-occupied single-family dwelling means a single-family dwelling that satisfies both of the following:

- (1) The dwelling is the owner's principal place of residence.
- (2) The dwelling qualifies for a homeowners' property tax exemption.

Effect, Objectives, and Benefits of the Proposed Amendments

Board staff initiated a project the objective of which was to recommend language that could be added to Property Tax Rules 313 and 321 to incorporate the definition of owner-

occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711, and thereby make the rules consistent with the new subdivision. As a result, Board staff issued Letter to Assessors No. (LTA) 2012/007 on January 30, 2012, which recommended amending Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to add the following sentence, and solicited comments regarding the recommendation from county assessors, county boards, and other interested parties:

An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption.

Board staff received one comment in response to LTA 2012/007. The comment explained that real property that is the owner's principal residence and qualifies for the \$100,000 disabled veterans' exemption provided by RTC section 205.5 also qualifies for the \$7,000 homeowners' property tax exemption provided by RTC section 218, even though taxpayers that are eligible for both exemptions choose to claim the larger disabled veterans' exemption, and that such property is therefore subject to the rebuttable presumption in RTC section 167, subdivision (a). The comment also recommended adding a sentence to the proposed amendments to both Property Tax Rules 313 and 321 to clarify that property that qualifies for a homeowners' property tax exemption includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

Board staff agreed with the above comment because RTC section 218, subdivision (b)(1), expressly provides that the homeowners' property tax exemption does not "apply to property on which the owner receives the veterans' exemption" specified by RTC section 205, but RTC section 218 does not contain similar language providing that property on which the owner receives the disabled veterans' exemption provided by RTC section 205.5 cannot qualify for the homeowners' property tax exemption. Subsequently, Board staff prepared Formal Issue Paper 12-004 and submitted it to the Board for consideration at its May 30, 2012, Property Tax Committee meeting. The issue paper recommended that the Board add references to RTC sections 205.5 and 218, which respectively prescribe the disabled veterans exemption and homeowners' property tax exemption, to the reference notes to Property Tax Rules 313 and 321, and add the following two sentences to Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to incorporate and clarify the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711:

An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue and Taxation Code section 218. "Property that qualifies for a homeowners' property tax exemption" also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5.

During its May 30, 2012, Property Tax Committee meeting, the Board determined that staff's recommended amendments are reasonably necessary to accomplish the objectives of making Property Tax Rules 313 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711, and further clarifying the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711. Therefore, the Board unanimously voted to propose the adoption of the recommended amendments.

The proposed amendments are anticipated to provide the following specific benefits:

- Make Property Tax Rules 312 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711; and
- Clarify the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711.

The Board has performed an evaluation of whether the proposed amendments to Property Tax Rules 313 and 321 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Property Tax Rules 313 and 321 are the only existing state regulations prescribing the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings. In addition, there is no federal property tax and there are no comparable federal regulations or statutes to Property Tax Rules 313 and 321.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Property Tax Rules 313 and 321 will not change the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings, as prescribed by RTC section 167. The adoption of the proposed amendments to Property Tax Rules 313 and 321 will only make the rules consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711, and clarify the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Property Tax Rules 313 and 321 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Property Tax Rules 313 and 321 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on August 21, 2012, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Property Tax Rules 313 and 321 during the August 21-23, 2012, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Property Tax Rules 313 and 321. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikethrough version of the text of Property Tax Rules 313 and 321 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments, which includes the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Property Tax Rules 313 and 321 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently

related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Property Tax Rules 313 and 321, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Bennion, Richard

From: BOE-Board Meeting Material
Sent: Friday, June 29, 2012 10:00 AM
To: Alonzo, Mary Ann (Legal); Anderson, Karen E.; Angeles, Joel; Armenta, Christopher; Bartolo, Lynn; Bennion, Richard; Bisauta, Christine (Legal); Blake, Sue; BOE-Board Meeting Material; Boring, Dilara; Carey, Lynne; Chung, Sophia (Legal); Davis, Toya P.; Delgado, Maria; Duran, David; Elliott, Claudia; Epolite, Anthony (Legal); Evans, Regina; Ferris, Randy (Legal); Garcia, Laura; Gau, David; Gilman, Todd; Giorgi, Alan; Giorgi, Dolores; Goehring, Teresa; Hale, Mike; Hanohano, Rebecca; Harvill, Mai; He, Mengjun; Heller, Bradley (Legal); Hellmuth, Leila; Herrera, Cristina; Holmes, Dana; Hughes, Shellie L; Ingenito, Robert; Jacobson, Andrew; Kinkle, Sherrie L; Kuhl, James; Lambert, Robert (Legal); Levine, David H. (Legal); LoFaso, Alan; Maddox, Ken; Madrigal, Claudia; Maeng, Elizabeth; Mandel, Marcy Jo; Matsumoto, Sid; Mayfield, Jenna; Mayhew, Heather; McGuire, Jeff; Miller, Brad; Mandel, Marcy Jo @ SCO; Moon, Richard (Legal); Morquecho, Raymond; Nienow, Trecia (Legal); Ralston, Natasha; Richmond, Joann; Riley, Denise (Legal); Schultz, Glenna; Scott, Megan; Shah, Neil; Singh, Sam; Smith, Rose; Stowers, Yvette; Suero-Gabler, Cynthia; Thomas, Robert; Torres, Rodrigo; Torres, Rodrigo; Tran, Mai (Legal); Treichelt, Tim; Vasquez, Rosalyn; Vasquez, Rosalyn; Wallentine, Sean; Whitaker, Lynn; Williams, Lee; Worley, Tabitha; Zivkovich, Robert
Subject: State Board of Equalization - Announcement of Regulatory Change 313 and 321

The State Board of Equalization will hold a public hearing regarding the adoption of proposed amendments to Property Tax Rule 313, *Hearing Procedure*, and Property Tax Rule 321, *Burden of Proof*. The public hearing regarding the proposed regulatory action will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on Tuesday, August 21, 2012.

The amendments incorporate and clarify the definition of "owner-occupied single-family dwelling" added to Revenue and Taxation Code section 167 by Assembly Bill No. 711 (Stats. 2011, ch. 220). To view the notice of proposed regulatory action, initial statement of reasons, proposed text, and history click on the following link: http://www.boe.ca.gov/regs/reg_313_321_2012.htm.

Questions regarding the substance of the proposed amendments should be directed to Mr. Bradley Heller, Tax Counsel IV, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email Bradley.Heller@boe.ca.gov, telephone (916) 323-3091, or FAX (916) 323-3387.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

Please do not reply to this message.

Board Proceedings Division, MIC:80
Rick Bennion
Regulations Coordinator
Phone (916) 445-2130
Fax (916) 324-3984
Richard.Bennion@boe.ca.gov

Bennion, Richard

From: State Board of Equalization - Announcement of Regulatory Change
) [StateBoardofEqualization-AnnouncementofRegulatoryChange@BOE.CA.GOV]
Sent: Friday, June 29, 2012 10:43 AM
To: BOE_REGULATIONS@LISTSERV.STATE.CA.GOV
Subject: State Board of Equalization - Announcement of Regulatory Change 313 and 321

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The amendments incorporate and clarify the definition of "owner-occupied single-family dwelling" added to Revenue and Taxation Code section 167 by Assembly Bill No. 711 (Stats. 2011, ch. 220). To view the notice of proposed regulatory action, initial statement of reasons, proposed text, and history click on the following link: http://www.boe.ca.gov/regs/reg_313_321_2012.htm.

Questions regarding the substance of the proposed amendments should be directed to Mr. Bradley Heller, Tax Counsel IV, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email Bradley.Heller@boe.ca.gov, telephone (916) 323-3091, or FAX (916) 323-3387.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

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their overall health. Studies have shown that healthy vision improves productivity, thus keeping employees safe to continue to work

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2450 Del Paso Road, Suite 105, Sacramento, California 95834.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Andrea Leiva, Policy Analyst
Address: 2450 Del Paso Road, Suite 105
Sacramento, CA 95834
Telephone No.: 916-575-7182
Fax No.: 916-575-7292
E-mail Address: andrea.leiva@dca.ca.gov

The backup contact person is:

Name: Mona Maggio, Executive Officer
Address: 2450 Del Paso Road, Suite 105
Sacramento, CA 95834
Telephone No.: 916-575-7170
Fax No.: 916-575-7292
E-mail Address: mona.maggio@dca.ca.gov

Website Access: Materials regarding this proposal can be found at <http://www.optometry.ca.gov/lawsregs/propregs.shtml>.

TITLE 18. BOARD OF EQUALIZATION

Section 313, *Hearing Procedure*, and Section 321, *Burden of Proof*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to adopt amendments to California Code of Regulations, title 18, sections (Property Tax Rules) 313, *Hearing Procedure*, and 321, *Burden of Proof*. Property Tax Rule 313 prescribes the procedures that county boards of equalization (county boards) must follow when conducting hearings on property tax applications. Property Tax Rule 321 prescribes the burden of proof in county boards' hearings regarding property tax applications. The proposed amendments clarify and make both Property Tax Rules 313 and 321 consistent with Assembly Bill No. (AB) 711 (Stats. 2011, ch. 220), which defined the term "owner-occupied single-family dwelling" for purposes of the rebuttable presumption regarding the burden of proof in hearings on specified property tax applications provided by Revenue and Taxation Code (RTC) section 167.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on August 21-23, 2012. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on August 21, 22, or 23, 2012. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Property Tax Rules 313 and 321.

AUTHORITY

Government Code section 15606.

REFERENCE

RTC sections 167, 205.5, and 218.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Prior Law

RTC section 167, subdivision (a), establishes a rebuttable presumption regarding the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings. RTC section 167, subdivision (a) provides that "Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b), there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment."

Property Tax Rule 313 prescribes the procedures county boards must follow when conducting hearings on property tax applications. Property Tax Rule 313, subdivision (c)(2), incorporates the rebuttable presumption in RTC section 167 and provides, in relevant part, that "The board shall not require the applicant to present evidence first when the hearing involves: . . . (2) The assessment of an owner-occupied single-family dwelling or the appeal of an escape assessment, and the applicant has filed an application that provides all of the information required in regulation 305(c) of this subchapter and has supplied all information as required by law to the assessor. In those instances, the chair shall require the assessor to present his or her case to the board first."

In addition, Property Tax Rule 321 prescribes the burden of proof in county boards' hearings regarding property tax applications. Property Tax Rule 321, subdivi-

sion (d), also incorporates the rebuttable presumption in RTC section 167 and provides that "in any hearing involving the assessment of an owner-occupied single-family dwelling . . . the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment."

Amendments Made by AB 711

AB 711 added subdivision (c) to RTC section 167 to define the term "owner-occupied single-family dwelling" as used in the rebuttable presumption. New subdivision (c) provides that:

For the purposes of this section, an owner-occupied single-family dwelling means a single-family dwelling that satisfies both of the following:

- (1) The dwelling is the owner's principal place of residence.
- (2) The dwelling qualifies for a homeowners' property tax exemption.

Effect, Objectives, and Benefits of the Proposed Amendments

Board staff initiated a project the objective of which was to recommend language that could be added to Property Tax Rules 313 and 321 to incorporate the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711, and thereby make the rules consistent with the new subdivision. As a result, Board staff issued Letter to Assessors No. (LTA) 2012/007 on January 30, 2012, which recommended amending Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to add the following sentence, and solicited comments regarding the recommendation from county assessors, county boards, and other interested parties:

An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption.

Board staff received one comment in response to LTA 2012/007. The comment explained that real property that is the owner's principal residence and qualifies for the \$100,000 disabled veterans' exemption provided by RTC section 205.5 also qualifies for the \$7,000 homeowners' property tax exemption provided by RTC section 218, even though taxpayers that are eligible for both exemptions choose to claim the larger disabled veterans' exemption, and that such property is therefore subject to the rebuttable presumption in RTC section 167, subdivision (a). The comment also recommended adding a sentence to the proposed amendments to both

Property Tax Rules 313 and 321 to clarify that property that qualifies for a homeowners' property tax exemption includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

Board staff agreed with the above comment because RTC section 218, subdivision (b)(1), expressly provides that the homeowners' property tax exemption does not "apply to property on which the owner receives the veterans' exemption" specified by RTC section 205, but RTC section 218 does not contain similar language providing that property on which the owner receives the disabled veterans' exemption provided by RTC section 205.5 cannot qualify for the homeowners' property tax exemption. Subsequently, Board staff prepared Formal Issue Paper 12-004 and submitted it to the Board for consideration at its May 30, 2012, Property Tax Committee meeting. The issue paper recommended that the Board add references to RTC sections 205.5 and 218, which respectively prescribe the disabled veterans exemption and homeowners' property tax exemption, to the reference notes to Property Tax Rules 313 and 321, and add the following two sentences to Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to incorporate and clarify the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711:

An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue and Taxation Code section 218. "Property that qualifies for a homeowners' property tax exemption" also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5.

During its May 30, 2012, Property Tax Committee meeting, the Board determined that staff's recommended amendments are reasonably necessary to accomplish the objectives of making Property Tax Rules 313 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711, and further clarifying the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711. Therefore, the Board unanimously voted to propose the adoption of the recommended amendments.

The proposed amendments are anticipated to provide the following specific benefits:

- Make Property Tax Rules 312 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711; and

- Clarify the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711.

The Board has performed an evaluation of whether the proposed amendments to Property Tax Rules 313 and 321 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Property Tax Rules 313 and 321 are the only existing state regulations prescribing the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings. In addition, there is no federal property tax and there are no comparable federal regulations or statutes to Property Tax Rules 313 and 321.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Property Tax Rules 313 and 321 will not change the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings, as prescribed by RTC section 167. The adoption of the proposed amendments to Property Tax Rules 313 and 321 will only make the rules consistent with the provisions, of RTC section 167, subdivision (c), as added by AB 711, and clarify the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by

AB 711. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The adoption of the proposed amendments to Property Tax Rules 313 and 321 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Property Tax Rules 313 and 321 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on August 21, 2012, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Property Tax Rules 313 and 321 during the August 21-23, 2012, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Property Tax Rules 313 and 321. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscore and strikeout version of the text of Property Tax Rules 313 and 321 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments, which includes the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

**SUBSTANTIALLY RELATED CHANGES
PURSUANT TO GOVERNMENT CODE
SECTION 11346.8**

The Board may adopt the proposed amendments to Property Tax Rules 313 and 321 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

**AVAILABILITY OF FINAL STATEMENT
OF REASONS**

If the Board adopts the proposed amendments to Property Tax Rules 313 and 321, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

GENERAL PUBLIC INTEREST

**DEPARTMENT OF HEALTH CARE
SERVICES**

**NON-DESIGNATED PUBLIC HOSPITALS
WILL BE REIMBURSED BASED ON A
CERTIFIED PUBLIC EXPENDITURE
METHODOLOGY UPON THE ENACTMENT
OF THE STATE BUDGET ACT OF 2012**

This notice is to provide information of public interest with respect to changes in the reimbursement methodology for Non-Designated Public Hospitals (NDPHs) to add a Certified Public Expenditure (CPE) methodology.

Currently NDPHs are reimbursed with 50% General Fund and 50% federal financial participation in addi-

tion to supplemental payments, based on intergovernmental transfers, under the NDPH Medi-Cal Rate Stabilization Act (commencing with Section 14165.55 of the Welfare and Institutions Code) added by AB 113 (Statutes of 2011).

Under the new CPE methodology, NDPHs will certify the cost of providing inpatient services to fee-for-service Medi-Cal beneficiaries and will receive, as reimbursement, the federal financial participation resulting from the certification of those costs. Further, under the legislation enacting the new CPE methodology, the intergovernmental transfer based supplemental payments authorized by AB 113 will be terminated.

Changes to Welfare and Institutions Code and the State Plan are necessary to allow NDPHs to participate in the CPE reimbursement methodology. These changes will take effect July 1, 2012.

PUBLIC REVIEW AND COMMENTS

Copies of the State Plan Amendment to the California Medicaid State Plan and/or the proposed California legislation that amends the Welfare and Institutions Code to make the changes described in this notice may be requested, in writing, from Ms. Pilar Williams, Department of Health Care Services, Safety Net Financing Division, MS 4518, P.O. Box 997436, Sacramento, CA 95899-7436.

Written comments concerning the proposal may be mailed to Pilar Williams at the above address and must be received on or before August 17, 2012.

**DEPARTMENT OF HEALTH CARE
SERVICES**

**THE DEPARTMENT OF HEALTH CARE
SERVICES TO DEVELOP A NEW
REIMBURSEMENT METHODOLOGY AND
IMPLEMENT A PROVIDER PAYMENT
REDUCTION UP TO 10 PERCENT FOR
CLINICAL LABORATORY OR
LABORATORY SERVICES**

This notice provides information of public interest about the proposed payment reduction that may be implemented for Medi-Cal clinical laboratory or laboratory services on July 1, 2012, and the development of a new rate reimbursement methodology for clinical laboratory or laboratory services.

The California Department of Health Care Services (DHCS) proposes to develop a new reimbursement methodology that is based on the lowest amounts other payers are paying for similar clinical laboratory services. Additionally, until the new methodology is ap-



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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JOHN CHIANG
State Controller

KRISTINE CAZADD
Executive Director

June 29, 2012

No. 2012/025

TO COUNTY ASSESSORS, COUNTY COUNSELS,
AND OTHER INTERESTED PARTIES:

**Notice of Proposed Regulatory Action
By the
State Board of Equalization**

**Proposed to Adopt Amendments to California Code of Regulations, Title 18,
Section 313, *Hearing Procedure*, and Section 321, *Burden of Proof***

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to adopt amendments to California Code of Regulations, title 18, sections (Property Tax Rules) 313, *Hearing Procedure*, and 321, *Burden of Proof*. Property Tax Rule 313 prescribes the procedures that county boards of equalization (county boards) must follow when conducting hearings on property tax applications. Property Tax Rule 321 prescribes the burden of proof in county boards' hearings regarding property tax applications. The proposed amendments clarify and make both Property Tax Rules 313 and 321 consistent with Assembly Bill No. (AB) 711 (Stats. 2011, ch. 220), which defined the term "owner-occupied single-family dwelling" for purposes of the rebuttable presumption regarding the burden of proof in hearings on specified property tax applications provided by Revenue and Taxation Code (RTC) section 167.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on August 21-23, 2012. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on August 21, 22, or 23, 2012. At the hearing, any

interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Property Tax Rules 313 and 321.

AUTHORITY

Government Code section 15606.

REFERENCE

RTC sections 167, 205.5, and 218.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Prior Law

RTC section 167, subdivision (a), establishes a rebuttable presumption regarding the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings. RTC section 167, subdivision (a) provides that "Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b), there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment."

Property Tax Rule 313 prescribes the procedures county boards must follow when conducting hearings on property tax applications. Property Tax Rule 313, subdivision (c)(2), incorporates the rebuttable presumption in RTC section 167 and provides, in relevant part, that "The board shall not require the applicant to present evidence first when the hearing involves: . . . (2) The assessment of an owner-occupied single-family dwelling or the appeal of an escape assessment, and the applicant has filed an application that provides all of the information required in regulation 305(c) of this subchapter and has supplied all information as required by law to the assessor. In those instances, the chair shall require the assessor to present his or her case to the board first."

In addition, Property Tax Rule 321 prescribes the burden of proof in county boards' hearings regarding property tax applications. Property Tax Rule 321, subdivision (d), also incorporates the rebuttable presumption in RTC section 167 and provides that "in any hearing involving the assessment of an owner-occupied single-family dwelling . . . the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment."

Amendments Made by AB 711

AB 711 added subdivision (c) to RTC section 167 to define the term “owner-occupied single-family dwelling” as used in the rebuttable presumption. New subdivision (c) provides that:

For the purposes of this section, an owner-occupied single-family dwelling means a single-family dwelling that satisfies both of the following:

- (1) The dwelling is the owner's principal place of residence.
- (2) The dwelling qualifies for a homeowners' property tax exemption.

Effect, Objectives, and Benefits of the Proposed Amendments

Board staff initiated a project the objective of which was to recommend language that could be added to Property Tax Rules 313 and 321 to incorporate the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711, and thereby make the rules consistent with the new subdivision. As a result, Board staff issued Letter to Assessors No. (LTA) 2012/007 on January 30, 2012, which recommended amending Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to add the following sentence, and solicited comments regarding the recommendation from county assessors, county boards, and other interested parties:

An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption.

Board staff received one comment in response to LTA 2012/007. The comment explained that real property that is the owner's principal residence and qualifies for the \$100,000 disabled veterans' exemption provided by RTC section 205.5 also qualifies for the \$7,000 homeowners' property tax exemption provided by RTC section 218, even though taxpayers that are eligible for both exemptions choose to claim the larger disabled veterans' exemption, and that such property is therefore subject to the rebuttable presumption in RTC section 167, subdivision (a). The comment also recommended adding a sentence to the proposed amendments to both Property Tax Rules 313 and 321 to clarify that property that qualifies for a homeowners' property tax exemption includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

Board staff agreed with the above comment because RTC section 218, subdivision (b)(1), expressly provides that the homeowners' property tax exemption does not “apply to property on which the owner receives the veterans' exemption” specified by RTC section 205, but RTC section 218 does not contain similar language providing that property on which the owner receives the disabled veterans' exemption provided by RTC section 205.5 cannot qualify for the homeowners' property tax exemption. Subsequently, Board staff prepared Formal Issue Paper 12-004 and submitted it to the Board for consideration at its May 30, 2012, Property Tax Committee meeting. The issue paper recommended that the Board add references to RTC sections 205.5 and 218, which respectively prescribe the disabled veterans exemption and

homeowners' property tax exemption, to the reference notes to Property Tax Rules 313 and 321, and add the following two sentences to Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to incorporate and clarify the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711:

An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue and Taxation Code section 218. "Property that qualifies for a homeowners' property tax exemption" also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5.

During its May 30, 2012, Property Tax Committee meeting, the Board determined that staff's recommended amendments are reasonably necessary to accomplish the objectives of making Property Tax Rules 313 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711, and further clarifying the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711. Therefore, the Board unanimously voted to propose the adoption of the recommended amendments.

The proposed amendments are anticipated to provide the following specific benefits:

- Make Property Tax Rules 312 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711; and
- Clarify the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711.

The Board has performed an evaluation of whether the proposed amendments to Property Tax Rules 313 and 321 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Property Tax Rules 313 and 321 are the only existing state regulations prescribing the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings. In addition, there is no federal property tax and there are no comparable federal regulations or statutes to Property Tax Rules 313 and 321.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Property Tax Rules 313 and 321 will not change the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings, as prescribed by RTC section 167. The adoption of the proposed amendments to Property Tax Rules 313 and 321 will only make the rules consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711, and clarify the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Property Tax Rules 313 and 321 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Property Tax Rules 313 and 321 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on August 21, 2012, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Property Tax Rules 313 and 321 during the August 21-23, 2012, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Property Tax Rules 313 and 321. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikeout version of the text of Property Tax Rules 313 and 321 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments, which includes the economic impact

June 29, 2012

analysis required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

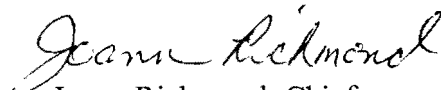
SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Property Tax Rules 313 and 321 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Property Tax Rules 313 and 321, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Sincerely,


Joann Richmond, Chief
Board Proceedings Division


JR:reb

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the August 21, 2012 Board Meeting


Joann Richmond, Chief
Board Proceedings Division

Initial Statement of Reasons

Adoption of Proposed Amendments to California Code of Regulations, Title 18, Section 313, *Hearing Procedure*, and Section 321, *Burden of Proof*

SPECIFIC PURPOSE AND NECESSITY

Prior Law

Revenue and Taxation Code (RTC) section 167, subdivision (a), establishes a rebuttable presumption regarding the burden of proof in county board of equalization (county board) hearings on property tax applications regarding owner-occupied single-family dwellings. RTC section 167, subdivision (a) provides that “Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b), there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment.”

California Code of Regulations, title 18, section (Property Tax Rule) 313, *Hearing Procedure*, prescribes the procedures county boards must follow when conducting hearings on property tax applications. Property Tax Rule 313, subdivision (c)(2), incorporates the rebuttable presumption in RTC section 167 and provides, in relevant part, that “The board shall not require the applicant to present evidence first when the hearing involves: . . . (2) The assessment of an owner-occupied single-family dwelling or the appeal of an escape assessment, and the applicant has filed an application that provides all of the information required in regulation 305(c) of this subchapter and has supplied all information as required by law to the assessor. In those instances, the chair shall require the assessor to present his or her case to the board first.”

In addition, Property Tax Rule 321, *Burden of Proof*, prescribes the burden of proof in county boards’ hearings regarding property tax applications. Property Tax Rule 321, subdivision (d), also incorporates the rebuttable presumption in RTC section 167 and provides that “in any hearing involving the assessment of an owner-occupied single-family dwelling . . . the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment.”

Amendments Made by AB 711

Assembly Bill No. (AB) 711 (Stats. 2011, ch. 220) added subdivision (c) to RTC section 167 to define the term “owner-occupied single-family dwelling” as used in the rebuttable presumption. New subdivision (c) provides that:

For the purposes of this section, an owner-occupied single-family dwelling means a single-family dwelling that satisfies both of the following:

- (1) The dwelling is the owner's principal place of residence.
- (2) The dwelling qualifies for a homeowners' property tax exemption.

Specific Purpose, Necessity, and Benefits of the Proposed Amendments

Board staff initiated a project to solve the problem of how to best amend Property Tax Rules 313 and 321 to incorporate the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711, and thereby make the rules consistent with the new subdivision. As a result, Board staff issued Letter to Assessors No. (LTA) 2012/007 on January 30, 2012, which recommended amending Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to add the following sentence, and solicited comments regarding the recommendation from county assessors, county boards, and other interested parties:

An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption.

Board staff received one comment in response to LTA 2012/007. The comment explained that real property that is the owner's principal residence and qualifies for the \$100,000 disabled veterans' exemption provided by RTC section 205.5 also qualifies for the \$7,000 homeowners' property tax exemption provided by RTC section 218, even though taxpayers that are eligible for both exemptions choose to claim the larger disabled veterans' exemption, and that such property is therefore subject to the rebuttable presumption in RTC section 167, subdivision (a). The comment also recommended adding a sentence to the proposed amendments to both Property Tax Rules 313 and 321 to clarify that property that qualifies for a homeowners' property tax exemption includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

Board staff agreed with the above comment because RTC section 218, subdivision (b)(1), expressly provides that the homeowners' property tax exemption does not “apply to property on which the owner receives the veterans' exemption” specified by RTC section 205, but RTC section 218 does not contain similar language providing that property on which the owner receives the disabled veterans' exemption provided by RTC section 205.5 cannot qualify for the homeowners' property tax exemption. Subsequently, Board staff prepared Formal Issue Paper 12-004 and submitted it to the Board for consideration at its May 30, 2012, Property Tax Committee meeting. The issue paper recommended that the Board add references to RTC sections 205.5 and 218, which respectively

prescribe the disabled veterans exemption and homeowners' property tax exemption, to the reference notes to Property Tax Rules 313 and 321, and add the following two sentences to Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to incorporate and clarify the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711:

An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue and Taxation Code section 218. "Property that qualifies for a homeowners' property tax exemption" also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5.

During its May 30, 2012, Property Tax Committee meeting, the Board determined that staff's recommended amendments are reasonably necessary to carry out the specific purpose and address the problem for which they are proposed, namely making Property Tax Rules 313 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711, and further clarifying the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711. Therefore, the Board unanimously voted to propose the adoption of the recommended amendments.

The proposed amendments are anticipated to provide the following specific benefits:

- Make Property Tax Rules 312 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711; and
- Clarify the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711.

The proposed amendments to Property Tax Rules 313 and 321 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Property Tax Rules 313 and 321.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 12-004, the attachments to the formal issue paper, and the comments made during the Board's discussion of the formal issue paper during its May 30, 2012, Property Tax Committee meeting in deciding to propose the amendments to Property Tax Rules 313 and 321 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Property Tax Rules 313 and 321 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking

process to adopt the proposed amendments at this time because the Board determined that the amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Property Tax Rules 313 and 321 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2,
SUBDIVISION (b)(6) AND ECONOMIC IMPACT ANALYSIS REQUIRED BY
GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

RTC section 167 establishes a rebuttable presumption regarding the burden of proof in county board hearings on property tax applications regarding owner-occupied single-family dwellings. AB 711 defined the term "owner-occupied single-family dwelling," as used in the rebuttable presumption, to mean a single-family dwelling that is the owner's principal place of residence and qualifies for the homeowners' property tax exemption provided by RTC section 218. In addition, the Board determined that property that qualifies for the homeowners' property tax exemption includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

The proposed amendments to Property Tax Rules 313 and 321 add two sentences to Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to:

- Incorporate the express definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711; and
- Clarify that property that qualifies for the homeowners' property tax exemption provided by RTC section 218 includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

The proposed amendments also add references to RTC sections 205.5 and 218, which respectively prescribe the disabled veterans exemption and homeowners' property tax exemption, to both rules' reference notes.

The proposed amendments make Property Tax Rules 313 and 321 consistent with the amendments made to RTC section 167 by AB 711. The proposed amendments to Property Tax Rules 313 and 321 also clarify the amendments made to RTC section 167

by AB 711 by explaining that property that qualifies for the homeowners' property tax exemption provided by RTC section 218 includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5, as suggested in the one comment Board staff received in response to LTA 2012/007. The proposed amendments do not make any other changes to either rule. Therefore, the Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Furthermore, Property Tax Rules 313 and 321 do not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not affect the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not have a significant adverse economic impact on business.

The proposed amendments may affect small business.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Sections 313 and 321**

Section 313. Hearing Procedure.

Hearings on applications shall proceed as follows:

(a) The chair or the clerk shall announce the number of the application and the name of the applicant. The chair shall then determine if the applicant or the applicant's agent is present. If neither is present, the chair shall ascertain whether the clerk has notified the applicant of the time and place of the hearing. If the notice has been given and neither the applicant nor the applicant's agent is present, the application shall be denied for lack of appearance, or, for good cause of which the board is timely informed prior to the hearing date, the board may postpone the hearing. If the notice has not been given, the hearing shall be postponed to a later date and the clerk directed to give proper notice thereof to the applicant.

The denial of an application for lack of appearance by the applicant, or the applicant's agent, is not a decision on the merits of the application and is not subject to the provisions of regulation 326 of this subchapter. The board of supervisors may adopt a procedure which authorizes reconsideration of the denial where the applicant furnishes evidence of good cause for the failure to appear or to make a timely request for postponement and files a written request for reconsideration within a period set by the board, not to exceed 60 days from the date of mailing of the notification of denial due to lack of appearance. Applicants who fail to request reconsideration within the period set, or whose requests for reconsideration are denied, may refile an appeal of the base year value during the next regular filing period in accordance with Revenue and Taxation Code section 80.

(b) If the applicant or the applicant's agent is present, the chair or the clerk shall announce the nature of the application, the assessed value as it appears on the local roll and the applicant's opinion of the value of the property. The chair may request that either or both parties briefly describe the subject property, the issues the board will be requested to determine, and any agreements or stipulations agreed to by the parties.

(c) In applications where the applicant has the burden of proof, the board shall require the applicant or the applicant's agent to present his or her evidence first, and then the board shall determine whether the applicant has presented proper evidence supporting his or her position. This is sometimes referred to as the burden of production. In the event the applicant has met the burden of production, the board shall then require the assessor to present his or her evidence. The board shall not require the applicant to present evidence first when the hearing involves:

(1) A penalty portion of an assessment.

(2) The assessment of an owner-occupied single-family dwelling or the appeal of an escape assessment, and the applicant has filed an application that provides all of the information required in regulation 305(c) of this subchapter and has supplied all information as required by law to the assessor. An owner-occupied single-family

dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue and Taxation Code section 218. "Property that qualifies for a homeowners' property tax exemption" also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5. In those instances, the chair shall require the assessor to present his or her case to the board first. With respect to escape assessments, the presumption in favor of the applicant provided in regulation 321(d) of this subchapter does not apply to appeals resulting from situations where an applicant failed to file a change in ownership statement, a business property statement, or to obtain a permit for new construction.

(3) A change in ownership and the assessor has not enrolled the purchase price, and the applicant has provided the change of ownership statement required by law. The assessor bears the burden of proving by a preponderance of the evidence that the purchase price, whether paid in money or otherwise, is not the full cash value of the property.

(d) All testimony shall be taken under oath or affirmation.

(e) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Failure to enter timely objection to evidence constitutes a waiver of the objection. The board may act only upon the basis of proper evidence admitted into the record. Board members or hearing officers may not act or decide an application based upon consideration of prior knowledge of the subject property, information presented outside of the hearing, or personal research. A full and fair hearing shall be accorded the application. There shall be reasonable opportunity for the presentation of evidence, for cross-examination of all witnesses and materials proffered as evidence, for argument and for rebuttal. The party having the burden of proof shall have the right to open and close the argument.

(f) When the assessor requests the board find a higher assessed value than he or she placed on the roll and offers evidence to support the higher value, the chair shall determine whether or not the assessor gave notice in writing to the applicant or the applicant's agent by personal delivery or by deposit in the United States mail directed to the address given on the application. If notice and a copy of the evidence offered has been supplied at least 10 days prior to the hearing, the assessor may introduce such evidence at the hearing. When the assessor proposes to introduce evidence to support a higher assessed value than the value on the roll, the assessor no longer has the presumption accorded in regulation 321(a) of this subchapter and the assessor shall present evidence first at the hearing, unless the applicant has failed to supply all the information required by law to the assessor. The foregoing notice requirement shall not prohibit the board from a finding of a higher assessed value when it has not been requested by the assessor.

(g) Hearings by boards and hearing officers shall be open, accessible, and audible to the public except that:

(1) Upon conclusion of the evidentiary portion of the hearing, the board or hearing officer may take the matter under submission and deliberate in private in reaching a decision, and

(2) The board or hearing officer may grant a request by the applicant or the assessor to close to the public a portion of the hearing relating to trade secrets. For purposes of this regulation, a "trade secret" is that information defined by section 3426.1 of the Civil Code. Such a request may be made by filing with the clerk a declaration under penalty of perjury that evidence is to be presented by the assessor or the applicant that relates to trade secrets whose disclosure to the public will be detrimental to the business interests of the owner of the trade secrets. The declaration shall state the estimated time it will take to present the evidence. Only evidence relating to the trade secrets may be presented during the time the hearing is closed, and such evidence shall be confidential unless otherwise agreed by the party to whom it relates.

Note: Authority cited: Section 15606(c), Government Code. Reference: Article XIII A, California Constitution; Sections 110, 167, 205.5, 218, 1605.4, 1607, 1609, 1609.4 and 1637, Revenue and Taxation Code; and Section 664, Evidence Code.

Section 321. Burden of Proof.

(a) Subject to exceptions set by law, it is presumed that the assessor has properly performed his or her duties. The effect of this presumption is to impose upon the applicant the burden of proving that the value on the assessment roll is not correct, or, where applicable, the property in question has not been otherwise correctly assessed. The law requires that the applicant present independent evidence relevant to the full value of the property or other issue presented by the application.

(b) If the applicant has presented evidence, and the assessor has also presented evidence, then the board must weigh all of the evidence to determine whether it has been established by a preponderance of the evidence that the assessor's determination is incorrect. The presumption that the assessor has properly performed his or her duties is not evidence and shall not be considered by the board in its deliberations.

(c) The assessor has the burden of establishing the basis for imposition of a penalty assessment.

(d) Exceptions to subsection (a) apply in any hearing involving the assessment of an owner-occupied single-family dwelling or an escape assessment. An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue

and Taxation Code section 218. "Property that qualifies for a homeowners' property tax exemption" also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5. In such instances, the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment.

(e) In hearings involving change in ownership, except as provided in section 110 of the Revenue and Taxation Code, the purchase price is rebuttably presumed to be the full cash value. The party seeking to rebut the presumption bears the burden of proof by a preponderance of the evidence.

(f) In weighing evidence, the board shall apply the same evidentiary standard to the testimony and documentary evidence presented by the applicant and the assessor. No greater relief may be granted than is justified by the evidence produced during the hearing.

Note: Authority cited: Section 15606(c), Government Code. Reference: Sections 110, 167, 205.5, 218 and 1601 et seq., Revenue and Taxation Code; and Section 664, Evidence Code.

Regulation History

Type of Regulation: Property Tax

Rule: 313, and 321

Title: 321, BURDEN OF PROOF
313, HEARING PROCEDURE

Preparation: Glenna Schultz

Legal Contact: Bradley Heller

The proposed amendments incorporate and clarify the definition of "owner-occupied single-family dwelling" added to Revenue and Taxation Code section 167 by Assembly Bill No. 711 (Stats. 2011, ch. 220).

History of Proposed Regulation:

August 21-23, 2012	Public hearing
June 29, 2012	OAL publication date; 45-day public comment period begins; IP mailing
June 19, 2012	Notice to OAL
May 30, 2012	PTC, Board Authorized Publication (Vote 5-0)

Sponsor:	NA
Support:	NA
Oppose:	NA

Statement of Compliance

The State Board of Equalization, in process of adopting Property Tax Rule 313, *Hearing Procedure*, and Rule 321, *Burden of Proof*, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on June 29, 2012, 53 days prior to the public hearing.

August 28, 2012



Richard Bennion
Regulations Coordinator
State Board of Equalization



LOS ANGELES COUNTY ASSESSOR
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2770
assessor.lacounty.gov
1.888.807.2111



SANTOS H. KREIMANN
CHIEF DEPUTY ASSESSOR
GEORGE RENKEI
ASSISTANT ASSESSOR

August 14, 2012

Mr. Rick Bennion
Regulations Coordinator
California State Board of Equalization
MIC: 80, 450 N Street
P.O. Box 942879
Sacramento, California 94279-0080

Dear Mr. Bennion:

LETTER TO ASSESSOR (LTA) 2012/025
NOTICE OF PROPOSED REGULATORY ACTION BY THE STATE BOARD OF
EQUALIZATION - PROPOSED TO ADOPT AMENDMENTS TO CALIFORNIA CODE OF
REGULATIONS, TITLE 18, SECTION 313, *HEARING PROCEDURE*, AND SECTION 321,
BURDEN OF PROOF

Our county has reviewed the proposed regulatory action(s). The Los Angeles County Office of the Assessor approves the documents as written and does not have any further recommendations at this time.

Should you have any questions, please feel free to contact me at DHough@assessor.lacounty.gov, or 213.974.9201.

Sincerely,

Dale Hough
Chief Appraiser
Assessment Services Division

DH:CA:ca

c: Santos H. Kreimann, Chief Deputy Assessor
George Renkei, Assistant Assessor
Directors
File - Appraisal Standards Section

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

AUGUST 21, 2012

ITEM F1

PUBLIC HEARING

Proposed Adoption of Amendments to

Property Tax Rules

313, Hearing Procedure

and

321, Burden of Proof

Reported by: Juli Price Jackson

No. CSR 5214

P R E S E N T

For the Board
of Equalization:

Jerome E. Horton
Chairman

Michelle Steel
Vice-Chairwoman

Betty T. Yee
Member

George Runner
Member

Marcy Jo Mandel
Appearing for John
Chiang, State
Controller (per
Government Code
Section 7.9)

Joann Richmond
Chief, Board
Proceedings Division

For the Department:

Bradley Heller
Tax Counsel IV
Legal Department
Tax and Fee Division

---oOo---

450 N STREET
SACRAMENTO, CALIFORNIA
AUGUST 21, 2012

---oOo---

MR. HORTON: Miss Richmond.

MS. RICHMOND: Our next item is F, Public Hearing, F1, proposed adoption of amendments to Property Tax Rules 313, hearing procedures, and Rule 321, burden of proof.

MR. HORTON: Thank you very much, Miss Richmond.

As Mr. Heller comes and we would ask that staff make a -- introduce.

MR. HELLER: Good afternoon, Chairman Horton, Members of the Board. I'm Bradley Heller from the Board's Legal Department. And I'm here to request that the Board adopt the proposed amendments to Property Tax Rule 313, hearing procedures, and Property Tax Rule 321, burden of proof, which the Board authorized for publication during the May 30th, 2012 Property Tax Committee meeting.

The amendments clarify and make both property tax rules consistent with the provisions of Assembly Bill 711, which define the term -- the term "owner-occupied single family dwelling" for purposes of applying the rebuttable presumption regarding the burden of proof in hearings on property tax applications regarding owner-occupied single family dwellings

provided by Revenue and Taxation Code Section 167.

I don't believe we received any public comments regarding the proposed amendments, but I can answer any questions that the Board may have.

MR. HORTON: Discussion, Members?

Is there a motion?

MS. YEE: Move adoption.

MR. HORTON: Move adoption by Member Steel, second by Member Runner.

Without objection, such will be the order.

Thank you.

MS. YEE: Member Yee.

MR. HORTON: Member Yee -- did I say Member Runner?

MR. RUNNER: You said Steel.

MR. HORTON: Oh, sorry.

MS. YEE: It's all right.

MR. RUNNER: You get too many of us, it's hard to keep track of.

MS. STEEL: Thank you.

MR. HORTON: Okay. I believe I'm blushing.

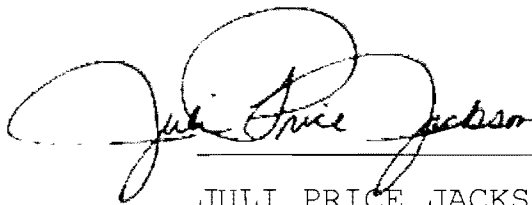
---o0o---

1 REPORTER'S CERTIFICATE.
2

3 State of California)
4) ss
5 County of Sacramento)
6

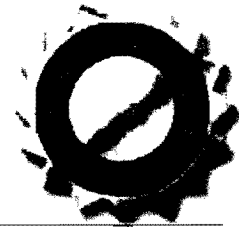
7 I, JULI PRICE JACKSON, Hearing Reporter for the
8 California State Board of Equalization certify that on
9 AUGUST 21, 2012 I recorded verbatim, in shorthand, to
10 the best of my ability, the proceedings in the
11 above-entitled hearing; that I transcribed the shorthand
12 writing into typewriting; and that the preceding pages 1
13 through 4 constitute a complete and accurate
14 transcription of the shorthand writing.
15

16 Dated: SEPTEMBER 5, 2012
17

18 
19

20 JULI PRICE JACKSON

21 Hearing Reporter
22
23
24
25
26
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28



2012 MINUTES OF THE STATE BOARD OF EQUALIZATION**Tuesday, August 21, 2012****PUBLIC HEARING****F1 Proposed Adoption of Amendments to Property Tax Rules 313, *Hearing Procedure*, and 321, *Burden of Proof***

Bradley Heller, Tax Counsel IV, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the amendments, which incorporate and clarify the definition of "owner-occupied single-family dwelling" added by Assembly Bill No. 711 (Stats. 2011, ch. 220) (Exhibit 8.3).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the amendments to regulation Property Tax Rules 313, *Hearing Procedure*, and 321, *Burden of Proof*, as recommended by staff.

[G1] LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

G1.1 Larry K. English, 263341, 336691, 336692 (KH)

1-1-00 to 12-31-00, \$11,601.77 Tax, \$0.00 Penalty

7-1-96 to 12-31-99, \$21,612.64 Tax, \$12,098.62 Fraud penalty, \$12,098.62 Amnesty Double Fraud Penalty, \$2,161.30 Failure-to-File Penalty, \$2,161.30 Amnesty Double Failure to File Penalty

1-1-01 to 3-31-03, \$7,546.15 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

G1.2 The Shamrock Three, 489600 (JH)

10-1-04 to 9-30-07, \$17,576.94 Tax, \$1,909.49 Negligence Penalty, \$1,887.50 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

G1.3 Pamela Lynn Luong, 534630 (FH)

7-1-04 to 6-30-07, \$57,768.70 Tax, \$5,776.95 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

G1.4 Frangi's Restaurant, Inc., 433581 (AS)

1-1-98 to 9-30-00, \$177,036.72 Tax, \$191,613.21 Fraud Penalty, \$79,447.77 Amnesty Double Fraud Penalty
\$271,060.98

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Note: These minutes are not final until Board approved.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80
916-445-2130 • FAX 916-324-3984
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First District, San Francisco

SEN. GEORGE RUNNER (RET.)
Second District, Lancaster

MICHELLE STEEL
Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

KRISTINE CAZADD
Executive Director

June 29, 2012

No. 2012/025

TO COUNTY ASSESSORS, COUNTY COUNSELS,
AND OTHER INTERESTED PARTIES:

**Notice of Proposed Regulatory Action
By the
State Board of Equalization**

**Proposed to Adopt Amendments to California Code of Regulations, Title 18,
Section 313, *Hearing Procedure*, and Section 321, *Burden of Proof***

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to adopt amendments to California Code of Regulations, title 18, sections (Property Tax Rules) 313, *Hearing Procedure*, and 321, *Burden of Proof*. Property Tax Rule 313 prescribes the procedures that county boards of equalization (county boards) must follow when conducting hearings on property tax applications. Property Tax Rule 321 prescribes the burden of proof in county boards' hearings regarding property tax applications. The proposed amendments clarify and make both Property Tax Rules 313 and 321 consistent with Assembly Bill No. (AB) 711 (Stats. 2011, ch. 220), which defined the term "owner-occupied single-family dwelling" for purposes of the rebuttable presumption regarding the burden of proof in hearings on specified property tax applications provided by Revenue and Taxation Code (RTC) section 167.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on August 21-23, 2012. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on August 21, 22, or 23, 2012. At the hearing, any

interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Property Tax Rules 313 and 321.

AUTHORITY

Government Code section 15606.

REFERENCE

RTC sections 167, 205.5, and 218.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Prior Law

RTC section 167, subdivision (a), establishes a rebuttable presumption regarding the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings. RTC section 167, subdivision (a) provides that "Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b), there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment."

Property Tax Rule 313 prescribes the procedures county boards must follow when conducting hearings on property tax applications. Property Tax Rule 313, subdivision (c)(2), incorporates the rebuttable presumption in RTC section 167 and provides, in relevant part, that "The board shall not require the applicant to present evidence first when the hearing involves: . . . (2) The assessment of an owner-occupied single-family dwelling or the appeal of an escape assessment, and the applicant has filed an application that provides all of the information required in regulation 305(c) of this subchapter and has supplied all information as required by law to the assessor. In those instances, the chair shall require the assessor to present his or her case to the board first."

In addition, Property Tax Rule 321 prescribes the burden of proof in county boards' hearings regarding property tax applications. Property Tax Rule 321, subdivision (d), also incorporates the rebuttable presumption in RTC section 167 and provides that "in any hearing involving the assessment of an owner-occupied single-family dwelling . . . the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment."

Amendments Made by AB 711

AB 711 added subdivision (c) to RTC section 167 to define the term “owner-occupied single-family dwelling” as used in the rebuttable presumption. New subdivision (c) provides that:

For the purposes of this section, an owner-occupied single-family dwelling means a single-family dwelling that satisfies both of the following:

- (1) The dwelling is the owner's principal place of residence.
- (2) The dwelling qualifies for a homeowners' property tax exemption.

Effect, Objectives, and Benefits of the Proposed Amendments

Board staff initiated a project the objective of which was to recommend language that could be added to Property Tax Rules 313 and 321 to incorporate the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711, and thereby make the rules consistent with the new subdivision. As a result, Board staff issued Letter to Assessors No. (LTA) 2012/007 on January 30, 2012, which recommended amending Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to add the following sentence, and solicited comments regarding the recommendation from county assessors, county boards, and other interested parties:

An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption.

Board staff received one comment in response to LTA 2012/007. The comment explained that real property that is the owner's principal residence and qualifies for the \$100,000 disabled veterans' exemption provided by RTC section 205.5 also qualifies for the \$7,000 homeowners' property tax exemption provided by RTC section 218, even though taxpayers that are eligible for both exemptions choose to claim the larger disabled veterans' exemption, and that such property is therefore subject to the rebuttable presumption in RTC section 167, subdivision (a). The comment also recommended adding a sentence to the proposed amendments to both Property Tax Rules 313 and 321 to clarify that property that qualifies for a homeowners' property tax exemption includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

Board staff agreed with the above comment because RTC section 218, subdivision (b)(1), expressly provides that the homeowners' property tax exemption does not “apply to property on which the owner receives the veterans' exemption” specified by RTC section 205, but RTC section 218 does not contain similar language providing that property on which the owner receives the disabled veterans' exemption provided by RTC section 205.5 cannot qualify for the homeowners' property tax exemption. Subsequently, Board staff prepared Formal Issue Paper 12-004 and submitted it to the Board for consideration at its May 30, 2012, Property Tax Committee meeting. The issue paper recommended that the Board add references to RTC sections 205.5 and 218, which respectively prescribe the disabled veterans exemption and

homeowners' property tax exemption, to the reference notes to Property Tax Rules 313 and 321, and add the following two sentences to Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to incorporate and clarify the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711:

An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue and Taxation Code section 218. "Property that qualifies for a homeowners' property tax exemption" also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5.

During its May 30, 2012, Property Tax Committee meeting, the Board determined that staff's recommended amendments are reasonably necessary to accomplish the objectives of making Property Tax Rules 313 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711, and further clarifying the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711. Therefore, the Board unanimously voted to propose the adoption of the recommended amendments.

The proposed amendments are anticipated to provide the following specific benefits:

- Make Property Tax Rules 312 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711; and
- Clarify the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711.

The Board has performed an evaluation of whether the proposed amendments to Property Tax Rules 313 and 321 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Property Tax Rules 313 and 321 are the only existing state regulations prescribing the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings. In addition, there is no federal property tax and there are no comparable federal regulations or statutes to Property Tax Rules 313 and 321.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Property Tax Rules 313 and 321 will not change the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings, as prescribed by RTC section 167. The adoption of the proposed amendments to Property Tax Rules 313 and 321 will only make the rules consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711, and clarify the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Property Tax Rules 313 and 321 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Property Tax Rules 313 and 321 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on August 21, 2012, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Property Tax Rules 313 and 321 during the August 21-23, 2012, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Property Tax Rules 313 and 321. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikeout version of the text of Property Tax Rules 313 and 321 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments, which includes the economic impact

June 29, 2012

analysis required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

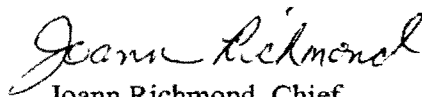
SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Property Tax Rules 313 and 321 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Property Tax Rules 313 and 321, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Sincerely,


Joann Richmond, Chief
Board Proceedings Division

JR:reb

Initial Statement of Reasons

Adoption of Proposed Amendments to California Code of Regulations, Title 18, Section 313, *Hearing Procedure*, and Section 321, *Burden of Proof*

SPECIFIC PURPOSE AND NECESSITY

Prior Law

Revenue and Taxation Code (RTC) section 167, subdivision (a), establishes a rebuttable presumption regarding the burden of proof in county board of equalization (county board) hearings on property tax applications regarding owner-occupied single-family dwellings. RTC section 167, subdivision (a) provides that “Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b), there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment.”

California Code of Regulations, title 18, section (Property Tax Rule) 313, *Hearing Procedure*, prescribes the procedures county boards must follow when conducting hearings on property tax applications. Property Tax Rule 313, subdivision (c)(2), incorporates the rebuttable presumption in RTC section 167 and provides, in relevant part, that “The board shall not require the applicant to present evidence first when the hearing involves: . . . (2) The assessment of an owner-occupied single-family dwelling or the appeal of an escape assessment, and the applicant has filed an application that provides all of the information required in regulation 305(c) of this subchapter and has supplied all information as required by law to the assessor. In those instances, the chair shall require the assessor to present his or her case to the board first.”

In addition, Property Tax Rule 321, *Burden of Proof*, prescribes the burden of proof in county boards’ hearings regarding property tax applications. Property Tax Rule 321, subdivision (d), also incorporates the rebuttable presumption in RTC section 167 and provides that “in any hearing involving the assessment of an owner-occupied single-family dwelling . . . the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment.”

Amendments Made by AB 711

Assembly Bill No. (AB) 711 (Stats. 2011, ch. 220) added subdivision (c) to RTC section 167 to define the term “owner-occupied single-family dwelling” as used in the rebuttable presumption. New subdivision (c) provides that:

For the purposes of this section, an owner-occupied single-family dwelling means a single-family dwelling that satisfies both of the following:

- (1) The dwelling is the owner's principal place of residence.
- (2) The dwelling qualifies for a homeowners' property tax exemption.

Specific Purpose, Necessity, and Benefits of the Proposed Amendments

Board staff initiated a project to solve the problem of how to best amend Property Tax Rules 313 and 321 to incorporate the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711, and thereby make the rules consistent with the new subdivision. As a result, Board staff issued Letter to Assessors No. (LTA) 2012/007 on January 30, 2012, which recommended amending Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to add the following sentence, and solicited comments regarding the recommendation from county assessors, county boards, and other interested parties:

An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption.

Board staff received one comment in response to LTA 2012/007. The comment explained that real property that is the owner's principal residence and qualifies for the \$100,000 disabled veterans' exemption provided by RTC section 205.5 also qualifies for the \$7,000 homeowners' property tax exemption provided by RTC section 218, even though taxpayers that are eligible for both exemptions choose to claim the larger disabled veterans' exemption, and that such property is therefore subject to the rebuttable presumption in RTC section 167, subdivision (a). The comment also recommended adding a sentence to the proposed amendments to both Property Tax Rules 313 and 321 to clarify that property that qualifies for a homeowners' property tax exemption includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

Board staff agreed with the above comment because RTC section 218, subdivision (b)(1), expressly provides that the homeowners' property tax exemption does not “apply to property on which the owner receives the veterans' exemption” specified by RTC section 205, but RTC section 218 does not contain similar language providing that property on which the owner receives the disabled veterans' exemption provided by RTC section 205.5 cannot qualify for the homeowners' property tax exemption. Subsequently, Board staff prepared Formal Issue Paper 12-004 and submitted it to the Board for consideration at its May 30, 2012, Property Tax Committee meeting. The issue paper recommended that the Board add references to RTC sections 205.5 and 218, which respectively

prescribe the disabled veterans exemption and homeowners' property tax exemption, to the reference notes to Property Tax Rules 311 and 321, and add the following two sentences to Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to incorporate and clarify the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711:

An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue and Taxation Code section 218. "Property that qualifies for a homeowners' property tax exemption" also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5.

During its May 30, 2012, Property Tax Committee meeting, the Board determined that staff's recommended amendments are reasonably necessary to carry out the specific purpose and address the problem for which they are proposed, namely making Property Tax Rules 313 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711, and further clarifying the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711. Therefore, the Board unanimously voted to propose the adoption of the recommended amendments.

The proposed amendments are anticipated to provide the following specific benefits:

- Make Property Tax Rules 312 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711; and
- Clarify the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711.

The proposed amendments to Property Tax Rules 313 and 321 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Property Tax Rules 313 and 321.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 12-004, the attachments to the formal issue paper, and the comments made during the Board's discussion of the formal issue paper during its May 30, 2012, Property Tax Committee meeting in deciding to propose the amendments to Property Tax Rules 313 and 321 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Property Tax Rules 313 and 321 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking

process to adopt the proposed amendments at this time because the Board determined that the amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Property Tax Rules 313 and 321 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2,
SUBDIVISION (b)(6) AND ECONOMIC IMPACT ANALYSIS REQUIRED BY
GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

RTC section 167 establishes a rebuttable presumption regarding the burden of proof in county board hearings on property tax applications regarding owner-occupied single-family dwellings. 'AB 711 defined the term "owner-occupied single-family dwelling," as used in the rebuttable presumption, to mean a single-family dwelling that is the owner's principal place of residence and qualifies for the homeowners' property tax exemption provided by RTC section 218. In addition, the Board determined that property that qualifies for the homeowners' property tax exemption includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

The proposed amendments to Property Tax Rules 313 and 321 add two sentences to Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to:

- Incorporate the express definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711; and
- Clarify that property that qualifies for the homeowners' property tax exemption provided by RTC section 218 includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

The proposed amendments also add references to RTC sections 205.5 and 218, which respectively prescribe the disabled veterans exemption and homeowners' property tax exemption, to both rules' reference notes.

The proposed amendments make Property Tax Rules 313 and 321 consistent with the amendments made to RTC section 167 by AB 711. The proposed amendments to Property Tax Rules 313 and 321 also clarify the amendments made to RTC section 167

by AB 711 by explaining that property that qualifies for the homeowners' property tax exemption provided by RTC section 218 includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5, as suggested in the one comment Board staff received in response to LTA 2012/007. The proposed amendments do not make any other changes to either rule. Therefore, the Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Furthermore, Property Tax Rules 313 and 321 do not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not affect the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not have a significant adverse economic impact on business.

The proposed amendments may affect small business.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Sections 313 and 321**

Section 313. Hearing Procedure.

Hearings on applications shall proceed as follows:

(a) The chair or the clerk shall announce the number of the application and the name of the applicant. The chair shall then determine if the applicant or the applicant's agent is present. If neither is present, the chair shall ascertain whether the clerk has notified the applicant of the time and place of the hearing. If the notice has been given and neither the applicant nor the applicant's agent is present, the application shall be denied for lack of appearance, or, for good cause of which the board is timely informed prior to the hearing date, the board may postpone the hearing. If the notice has not been given, the hearing shall be postponed to a later date and the clerk directed to give proper notice thereof to the applicant.

The denial of an application for lack of appearance by the applicant, or the applicant's agent, is not a decision on the merits of the application and is not subject to the provisions of regulation 326 of this subchapter. The board of supervisors may adopt a procedure which authorizes reconsideration of the denial where the applicant furnishes evidence of good cause for the failure to appear or to make a timely request for postponement and files a written request for reconsideration within a period set by the board, not to exceed 60 days from the date of mailing of the notification of denial due to lack of appearance. Applicants who fail to request reconsideration within the period set, or whose requests for reconsideration are denied, may refile an appeal of the base year value during the next regular filing period in accordance with Revenue and Taxation Code section 80.

(b) If the applicant or the applicant's agent is present, the chair or the clerk shall announce the nature of the application, the assessed value as it appears on the local roll and the applicant's opinion of the value of the property. The chair may request that either or both parties briefly describe the subject property, the issues the board will be requested to determine, and any agreements or stipulations agreed to by the parties.

(c) In applications where the applicant has the burden of proof, the board shall require the applicant or the applicant's agent to present his or her evidence first, and then the board shall determine whether the applicant has presented proper evidence supporting his or her position. This is sometimes referred to as the burden of production. In the event the applicant has met the burden of production, the board shall then require the assessor to present his or her evidence. The board shall not require the applicant to present evidence first when the hearing involves:

(1) A penalty portion of an assessment.

(2) The assessment of an owner-occupied single-family dwelling or the appeal of an escape assessment, and the applicant has filed an application that provides all of the information required in regulation 305(c) of this subchapter and has supplied all information as required by law to the assessor. An owner-occupied single-family

dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue and Taxation Code section 218. "Property that qualifies for a homeowners' property tax exemption" also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5. In those instances, the chair shall require the assessor to present his or her case to the board first. With respect to escape assessments, the presumption in favor of the applicant provided in regulation 321(d) of this subchapter does not apply to appeals resulting from situations where an applicant failed to file a change in ownership statement, a business property statement, or to obtain a permit for new construction.

(3) A change in ownership and the assessor has not enrolled the purchase price, and the applicant has provided the change of ownership statement required by law. The assessor bears the burden of proving by a preponderance of the evidence that the purchase price, whether paid in money or otherwise, is not the full cash value of the property.

(d) All testimony shall be taken under oath or affirmation.

(e) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Failure to enter timely objection to evidence constitutes a waiver of the objection. The board may act only upon the basis of proper evidence admitted into the record. Board members or hearing officers may not act or decide an application based upon consideration of prior knowledge of the subject property, information presented outside of the hearing, or personal research. A full and fair hearing shall be accorded the application. There shall be reasonable opportunity for the presentation of evidence, for cross-examination of all witnesses and materials proffered as evidence, for argument and for rebuttal. The party having the burden of proof shall have the right to open and close the argument.

(f) When the assessor requests the board find a higher assessed value than he or she placed on the roll and offers evidence to support the higher value, the chair shall determine whether or not the assessor gave notice in writing to the applicant or the applicant's agent by personal delivery or by deposit in the United States mail directed to the address given on the application. If notice and a copy of the evidence offered has been supplied at least 10 days prior to the hearing, the assessor may introduce such evidence at the hearing. When the assessor proposes to introduce evidence to support a higher assessed value than the value on the roll, the assessor no longer has the presumption accorded in regulation 321(a) of this subchapter and the assessor shall present evidence first at the hearing, unless the applicant has failed to supply all the information required by law to the assessor. The foregoing notice requirement shall not prohibit the board from a finding of a higher assessed value when it has not been requested by the assessor.

(g) Hearings by boards and hearing officers shall be open, accessible, and audible to the public except that:

(1) Upon conclusion of the evidentiary portion of the hearing, the board or hearing officer may take the matter under submission and deliberate in private in reaching a decision, and

(2) The board or hearing officer may grant a request by the applicant or the assessor to close to the public a portion of the hearing relating to trade secrets. For purposes of this regulation, a "trade secret" is that information defined by section 3426.1 of the Civil Code. Such a request may be made by filing with the clerk a declaration under penalty of perjury that evidence is to be presented by the assessor or the applicant that relates to trade secrets whose disclosure to the public will be detrimental to the business interests of the owner of the trade secrets. The declaration shall state the estimated time it will take to present the evidence. Only evidence relating to the trade secrets may be presented during the time the hearing is closed, and such evidence shall be confidential unless otherwise agreed by the party to whom it relates.

Note: Authority cited: Section 15606(c), Government Code. Reference: Article XIII A, California Constitution; Sections 110, 167, 205.5, 218, 1605.4, 1607, 1609, 1609.4 and 1637, Revenue and Taxation Code; and Section 664, Evidence Code.

Section 321. Burden of Proof.

(a) Subject to exceptions set by law, it is presumed that the assessor has properly performed his or her duties. The effect of this presumption is to impose upon the applicant the burden of proving that the value on the assessment roll is not correct, or, where applicable, the property in question has not been otherwise correctly assessed. The law requires that the applicant present independent evidence relevant to the full value of the property or other issue presented by the application.

(b) If the applicant has presented evidence, and the assessor has also presented evidence, then the board must weigh all of the evidence to determine whether it has been established by a preponderance of the evidence that the assessor's determination is incorrect. The presumption that the assessor has properly performed his or her duties is not evidence and shall not be considered by the board in its deliberations.

(c) The assessor has the burden of establishing the basis for imposition of a penalty assessment.

(d) Exceptions to subsection (a) apply in any hearing involving the assessment of an owner-occupied single-family dwelling or an escape assessment. An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue

and Taxation Code section 218. "Property that qualifies for a homeowners' property tax exemption" also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5. In such instances, the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment.

(e) In hearings involving change in ownership, except as provided in section 110 of the Revenue and Taxation Code, the purchase price is rebuttably presumed to be the full cash value. The party seeking to rebut the presumption bears the burden of proof by a preponderance of the evidence.

(f) In weighing evidence, the board shall apply the same evidentiary standard to the testimony and documentary evidence presented by the applicant and the assessor. No greater relief may be granted than is justified by the evidence produced during the hearing.

Note: Authority cited: Section 15606(c), Government Code. Reference: Sections 110, 167, 205.5, 218 and 1601 et seq., Revenue and Taxation Code; and Section 664, Evidence Code.

Regulation History

Type of Regulation: Property Tax

Rule: 313, and 321

Title: 321, BURDEN OF PROOF
313, HEARING PROCEDURE

Preparation: Glenna Schultz

Legal Contact: Bradley Heller

The proposed amendments incorporate and clarify the definition of "owner-occupied single-family dwelling" added to Revenue and Taxation Code section 167 by Assembly Bill No. 711 (Stats. 2011, ch. 220).

History of Proposed Regulation:

August 21-23, 2012	Public hearing
June 29, 2012	OAL publication date; 45-day public comment period begins; IP mailing
June 19, 2012	Notice to OAL
May 30, 2012	PTC, Board Authorized Publication (Vote 5-0)

Sponsor:	NA
Support:	NA
Oppose:	NA